AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

3-20-91
Vol. 56 No. 54

federal register

Wednesday
March 20, 1991

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

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SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

3-20-91
Vol. 56 No. 54
Pages 11651-11904

federal register

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: March 28, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC
RESERVATIONS: 202–523–5240

MIAMI, FL

WHEN: April 18:
1st Session 9:00 am to 12 noon.
2nd Session 1:30 pm to 4:30 pm
WHERE: 51 Southwest First Avenue, Room 914, Miami, FL
RESERVATIONS: 1–800–347–1997

CHICAGO, IL

WHEN: April 25, at 9:00 am
WHERE: 219 S. Dearborn Street, Conference Room 1220, Chicago, IL
RESERVATIONS: 1–800–366–2998

WASHINGTON, DC

WHEN: May 23, at 9:00 am
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street, NW, Washington, DC
RESERVATIONS: 202–523–5240 (voice); 202–523–5229 (TDD)

NOTE: There will be a sign language interpreter for hearing impaired persons at the May 23, Washington, DC briefing.

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Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 90-ANE-06]

Amendment to Control Zone; Hartford, CT

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: This corrective action changes the effective date of the amendment to the Hartford, Connecticut Control Zone, for charting purposes.

EFFECTIVE DATE: The effective date of 0901 u.t.c., March 29, 1991, is delayed to 0901 u.t.c., May 30, 1991.

FOR FURTHER INFORMATION CONTACT: Charles Taylor, System Management Branch, ANE-530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA, 01803-5299; telephone: (617) 270-2428.

SUPPLEMENTARY INFORMATION:

History

Airspace Docket No. 90-ANE-06, published in the **Federal Register** on February 21, 1991 (56 FR 6982), amended the Hartford, CT Control Zone. This action was originally scheduled to become effective on March 29, 1991. For charting purposes, the effective date of this action is delayed until May 30, 1991.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) Is not a "major rule" under the Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Delay of Effective Date

The effective date on Airspace Docket No. 90-ANE-06 is hereby delayed from March 29, 1991, to May 30, 1991.

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); Executive Order 10854; 14 CFR 11.69.

Issued in Burlington, Massachusetts on

John J. Boyce,

Acting Manager, Air Traffic Division, New England Region.

[FR Doc. 91-6578 Filed 3-19-91; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 799

[Docket No. 910240-1040]

Decontrol of Certain Gallium Arsenide

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule.

SUMMARY: This interim rule removes the validated export licensing requirements for exports to Country Groups Q, T, V, W, and Y of certain gallium arsenide (GaAs) controlled under paragraph (b) of Export Control Commodity Number (ECCN) 1757A in the Commodity Control List (CCL), Supplement No. 1 to § 799.1 of the Export Administration Regulations (EAR). This action follows a positive determination of foreign availability under section 5(f) of the Export Administration Act of 1979, as amended (EAA). The net effect of this rule will be to reduce the number of license applications that will have to be filed for this type of material.

DATES: *Effective:* This rule is effective February 19, 1991.

Comments: Comments must be received by April 19, 1991.

Applicability: This rule applies as of February 19, 1991, for countries in Country Groups T and V (except the People's Republic of China and Afghanistan). The rule applies as of March 5, 1991, for the People's Republic of China, Afghanistan, and countries in Country Groups, Q, W, and Y.

ADDRESSES: Written comments (six copies) should be sent to Sharon Gongwer, Office of Technology and Policy Analysis, Bureau of Export Administration, U.S. Department of Commerce, room 1622, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Jeffrey Tripp, Office of Technology and Policy Analysis, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230, Telephone: (202) 377-1309.

SUPPLEMENTARY INFORMATION:

Background

Although the Export Administration Act (EAA) expired on September 30, 1990, the President invoked the International Emergency Economic Powers Act and continued in effect, to the extent permitted by law, the provisions of the EAA and the Export Administration Regulations (EAR) in Executive Order 12730 of September 30, 1990.

The Bureau of Export Administration (BXA) maintains the Commodity Control List (CCL), which identifies those items subject to Department of Commerce export controls. With limited exceptions, BXA may not maintain national security based export controls on items for which a positive determination of foreign availability has been made under section 5(f) of the EAA and section 791 of the EAR.

On October 19, 1990 (55 FR 42419), the Commerce Department published a **Federal Register** notice stating that the Deputy Assistant Secretary for Export Administration had made a positive determination of foreign availability under section 5(f) of the EAA for doped semi-insulating (SI) GaAs, conducting GaAs, and certain undoped semi-insulating GaAs controlled under paragraph (b) of ECCN 1757A in the CCL. This interim rule implements the positive determination of foreign availability by removing national

security based validated licensing requirements for exports of certain gallium arsenide covered by the foreign availability determination.

Following this regulatory action, exports of the following types of gallium arsenide, as described in the *Validated License Required* paragraph for ECCN 1757A, will no longer require a validated license for national security reasons:

(1) Doped semi-insulating GaAs;

(2) Conducting GaAs; and

(3) Undoped semi-insulating GaAs having any of the following characteristics:

(a) Dislocation density (etch pit density-EPD) exceeding 1,000 per mm^2;

(b) Resistivity less than 1×10^7 ohm-cm;

(c) Carrier mobility less than 0.60 m^2/Volt. sec.;

(d) Diameter less than 3 inches (76.2 mm); or

(e) Wafers with an orientation other than (1–0–0).

A validated license continues to be required for national security reasons for exports to all destinations, except Canada, of gallium arsenide, controlled by paragraph (b) of ECCN 1757A, that is not covered by the foreign availability determination (e.g., certain undoped SI GaAs that exceeds all of the technical parameters described above).

Foreign policy controls remain in effect. A validated licensing requirement continues to apply to exports of all gallium arsenide to Country Groups S and Z. Other foreign policy based validated licensing requirements also remain in effect (e.g., military or police entities in the Republic of South Africa as required by § 785.4(a)(2) of the EAR).

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694–0005.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a foreign and military affairs function. This rule does not impose a new control. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

However, because of the importance of the issues raised by these regulations, this rule is issued in interim form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close April 19, 1991. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, room 4525, Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 377–2593.

List of Subjects in 15 CFR Part 799

Exports, Reporting and recordkeeping requirements.

Accordingly, part 799 of the Export Administration Regulations (15 CFR parts 730–799) is amended as follows:

1. The authority citation for 15 CFR part 799 continues to read as follows:

Authority: Public Law 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended; E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Public Law 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); E.O. 12571 of October 27, 1986 (51 FR 39505; October 29, 1986); Public Law 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990).

PART 799—[AMENDED]

2. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), ECCN 1757A is amended by revising the *Validated License Required* paragraph to read as follows:

1757A Compounds and materials as described in this entry.

Controls for ECCN 1757A

* * * * *

Validated License Required: Country Groups QSTVWYZ, except as provided below for exports of certain gallium arsenide controlled under paragraph (b) of this ECCN 1757A to destinations in Country Groups Q, T, V, W, and Y.

Gallium arsenide. General License G–DEST is available for exports to destinations in Country Groups Q, T, V, W, and Y for the following types of gallium arsenide controlled under paragraph (b) of this ECCN 1757A:

(a) Doped semi-insulating GaAs;

(b) Conducting GaAs; and

(c) Undoped semi-insulating GaAs having any of the following characteristics:

(1) Dislocation density (etch pit density-EPD) exceeding 1,000 per mm^2;

(2) Resistivity less than 1×10^7 ohm-cm;

(3) Carrier mobility less than 0.60 m^2/Volt. sec.;

(4) Diameter less than 3 inches (76.2 mm); or

(5) Wafers with an orientation other than (1–0–0)

* * * * *

Dated: March 12, 1991.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 91–6384 Filed 3–19–91; 8:45 am]

BILLING CODE 3510–DT–M

FEDERAL TRADE COMMISSION

16 CFR Part 307

Regulations Under the Comprehensive Smokeless Tobacco Health Education Act of 1986

AGENCY: Federal Trade Commission.

ACTION: Notice of final rulemaking.

SUMMARY: In a notice of proposed rulemaking published on July 31, 1989 (54 FR 31541) the Federal Trade Commission requested public comment on proposed amendments to 16 CFR part 307, the Commission's regulations under the Comprehensive Smokeless Tobacco Health Education Act of 1986 ("Act"). The existing regulations, which took effect on February 27, 1987, implemented the Act's requirements for the display of health warnings in the labeling and advertising of smokeless tobacco products and for the submission of plans for compliance with the Act. The existing regulations exempt "utilitarian objects for personal use, such as pens, pencils, clothing and sporting goods" from the Act's requirement that all advertising display a series of three rotating health warnings. The Commission's decision to exempt utilitarian items was challenged in court, and the court subsequently ordered the Commission to delete the exemption.[1] Consequently, the notice proposed the deletion of the exemption of utilitarian objects from the regulations, and proposed a method for displaying the required health warnings on utilitarian objects. The Commission received approximately 96 comments to its proposal. Having considered all the issues raised by the comments, the Commission is now issuing a final rule, amending the previous regulations. This notice contains the statement of basis and purpose and the text of the final amended regulations.

EFFECTIVE DATES: The effective date of these regulations which implement the display requirements on utilitarian objects will be April 19, 1991; however, those utilitarian objects already produced at the time of publication may be distributed for up to 12 months after the effective date.

ADDRESSES: Requests for copies of the regulations and the statement of basis and purpose should be sent to Public Reference Branch, room 130, Federal Trade Commission, 6th and Pennsylvania Avenue NW., Washington DC 20580.

FOR FURTHER INFORMATION CONTACT: Anne V. Maher, Federal Trade Commission, S–4002, 6th and Pennsylvania Avenue NW., Washington, DC 20580. (202) 326–2987.

SUPPLEMENTARY INFORMATION:

Statement of Basis and Purpose

I. Introduction

The Smokeless Tobacco Act was enacted by Congress for the express purpose of educating the public about the health consequences of using smokeless tobacco products.[2] To achieve this end, the Act required the random display of three health warnings on the packaging and in the advertising of smokeless tobacco products.

Specifically, the Smokeless Tobacco Act mandated that one of the following three health warnings appear in the labeling and advertising (with the exception of outdoor billboard advertising) of smokeless tobacco products:

Warning: This product may cause mouth cancer

Warning: This product may cause gum DISEASE and tooth loss

Warning: This product is not a safe alternative to cigarettes

The Act also provided that the warnings be displayed in a conspicuous and prominent place, in conspicuous and legible type in contrast with all other printed material. The Act specified a circle and arrow format for the warning statement in advertising and directed the Commission to issue regulations implementing the display requirements. In addition, the Act required the marketers of smokeless tobacco products to submit to the Commission for approval plans for complying with the display requirements.

In its final regulations implementing the Smokeless Tobacco Act, the Commission exempted "utilitarian objects of personal use, such as pens, pencils, clothing and sporting goods" from the Act's requirement that all advertising display the warnings. These objects display the manufacturers' brand names and logos, and sometimes brief selling messages; are either sold or given to consumers for their personal use; and include such items as clothing, sporting goods, towels, mugs and novelty items.

Public Citizen filed an action on behalf of itself and several organizations challenging the Commission's decision to exempt utilitarian items.[3] The United States District Court ruled in favor of the plaintiffs and the United States Court of Appeals for the District of Columbia Circuit affirmed, holding that Congress had not granted the Commission authority to create the exemption for utilitarian items.[4] Consequently, pursuant to the court's order, on July 31, 1989, the Commission published a notice announcing and seeking comments on proposed amendments to the smokeless tobacco regulations in order to delete

[1] *Public Citizen, et al.* v. *Federal Trade Commission*, No. 88–5209, (D.C. Cir. March 14, 1989), *aff'g*, 688 F. Supp. 667 (D.D.C. 1988).

[2] Public Law No. 99–252, 100 Stat. 30 (1986), 15 U.S.C. 4401 *et seq.*

[3] The American Cancer Society, the American Heart Association, the American Lung Association, and the American Public Health Association were the co-plaintiffs.

[4] *Public Citizen*, 869 F. 2d 1541.

the exemption for utilitarian objects.[5] The amended regulation also proposed a method for displaying the required warnings on utilitarian objects.

After several requests, the Commission extended the period in which to file comments from August 30, 1989 to October 16, 1989.[6] The Commission received approximately 90 comments which were placed on the public record.[7] Twenty-nine comments were received from members of Congress, 35 from firms involved in the manufacture or distribution of utilitarian items, 13 from state health agencies, 8 from medical associations and health groups, 2 from federal agencies, 3 from advocacy groups and 2 from individuals. In addition, the Commission received over 50 physical exhibits, consisting primarily of the different types of utilitarian objects used to advertise smokeless tobacco products.

As a result of issues raised by the comments, the Commission reopened the comment period for an additional 30 days in order to solicit comments to three specific questions, and to receive any rebuttal views.[8] An additional 6 comments were received and placed on the public record.[9]

II. The Regulations

The Commission's original regulations were written, for the most part, as creating safe harbors rather than imposing mandatory, inflexible requirements for compliance with the Smokeless Tobacco Act. The proposed amended regulations followed this approach by allowing alternative means of ensuring the conspicuousness of the warnings on utilitarian objects. The final amended regulation adopts the same flexible approach, and specifies safe harbors for complying with the Act's warning requirements for utilitarian items. Given the hundreds of different configurations of utilitarian objects, the Commission believes that industry must be given a reasonable amount of flexibility in conforming the warning requirements to this type of advertising, while at the same time ensuring that the warnings are effective. Based on the record before it, the Commission believes that the warnings specified for utilitarian items by these safe harbors meet the Act's requirements for conspicuousness. If, however, there is a pattern of abuse or confusion suggesting that the safe harbors do not require sufficiently conspicuous warnings, the Commission will consider whether it is necessary to promulgate regulations to provide greater specificity as to the size and location of the warnings or to require larger warnings. This statement discusses separately four aspects of the regulations: The definition of utilitarian object (§ 307.3(n)), the deletion of the exemption for utilitarian objects (§ 307.4(b)), the redesignation of certain sections of the original regulation (§§ 307.9, 307.10 and 307.11), and the addition of a new section setting forth the requirements of disclosure of the health warnings on utilitarian objects. The statement also addresses additional issues raised by the comments.

A. Definition of Utilitarian Object

As originally proposed, § 307.3 of the regulation was amended to add a new subsection (n), containing the definition of "utilitarian object" as "items sold or given by any manufacturer, packager or importer to consumers for their personal use, that display the brand name, logo, or selling message of any smokeless tobacco product. Such items include but are not limited to, clothing, sporting goods, towels, cuspidors, and furniture."

In the invitation to comment that accompanied the proposed regulations in the **Federal Register**, the Commission sought comment on the proposed definition, and specifically asked:

(a) If there were other items used by the smokeless tobacco companies for promotional purposes that were not covered by the proposed definition; and (b) what kinds of objects, excluding all print or audiovisual advertising are used to promote smokeless products.[10]

The Commission received fifteen comments, from state health agencies, and medical and consumer health groups, in support of broadening the definition of utilitarian items to include sponsored auto racing vehicles.[11] Several of these groups, moreover, favor broadening the definition to include "objects (on which) any manufacturer, packager, or importer pays to have the brand name, logo, or selling message of any smokeless tobacco product displayed before consumers, including but not limited to sponsored auto racing vehicles."[12]

The Commission recognizes that the smokeless tobacco companies' display of their brand names and logos on such vehicles—as well as on banners, flags and grandstands at sporting events which they sponsor—may be a form of advertising, as that term has been interpreted under the Smokeless Tobacco Act.[13] However, the current proceeding deals only with the Commission's prior exclusion of "utilitarian objects for personal use, such as pens, pencils, clothing and sporting goods." The Commission sees no basis for expanding the well-established and commonly understood meaning of the term in order to cover racing cars. Thus, the question of whether racing cars are required to carry warnings and, if so, the size and location of that warning must be answered under the existing statute and regulation.

The Commission has, however, made two changes to the proposed definition of utilitarian object for purposes of clarification, rather than substance. First, the Commission has added the clause "other than smokeless tobacco products" after "Utilitarian objects mean items * * *" in order to differentiate actual smokeless tobacco packages from utilitarian objects, because each have different labeling requirements. In addition, the definition now includes those items "sold or given *or caused to be sold or given* by any manufacturer * * * to consumers for their personal use * * *" (emphasis added). This language recognizes what one comment noted, namely that retailers, wholesalers and distributors are often responsible for the promotion and distribution of utilitarian items.[14] For example, a smokeless tobacco manufacturer may license its trademark to a hat manufacturer, who will sell hats with a smokeless brand name or logo through its own independent distribution network. The additional language ensures that the smokeless manufacturers are legally responsible for ensuring that such objects meet the Act's warning requirements. Furthermore, this additional phrase is consistent with the language of the Act

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[5] 54 FR 31541 (1989).

[6] 54 FR 37117 (1989).

[7] Comm'n Pub. Docket No. 215–72. Public comments will be referenced by their assigned docket number. The docket numbers will be followed by a colon which will be followed by the cited page number(s) of the comment. For example 24:6 means page 6 of comment number 24.

[8] 55 FR 9142 (1990).

[9] Comm'n Pub. Docket No. 275–63. Comments received in this reopened comment period will be referenced by their assigned docket numbers, preceded by a 2–. For example, 2–3:26 refers to page 26 of the third docketed comment in the second comment period.

[10] 54 FR 31541 at 31544 Question 1 (1989).

[11] Comm'n Pub. Docket No. 215–72, 16:1–2; 26:2–3; 28:1; 33:1; 37:1; 38:2; 41:1; 42:1; 43:1; 46:1; 53:1–2; 54:1; 62:1; 74:2–3; 76:1–2.

[12] *Id.* at 28:1; 38:2; 41:1; 53:2; 62:1; 76:1.

[13] *Public Citizen*, 869 F.2d 1541. Moreover, in promulgating the original regulations, the Commission acknowledged that banners at sporting events could constitute advertising under certain circumstances, but believed such determinations should be addressed on a case by case basis. 51 FR 40005 at 40007 (1986). The Commission has not yet had the opportunity to address this issue.

[14] Comm'n Pub. Docket No. 215–72, 54:1.

and regulation, both of which prohibit a manufacturer, packager, or importer of smokeless tobacco products to advertise or *cause to be advertised* any smokeless tobacco product without the warnings (emphasis added).

B. Deletion of Exemption for Utilitarian Objects

Section 307.4 of the rule currently sets forth the acts that are prohibited by the regulations. The next to last sentence of subsection (b) provides that utilitarian objects are exempted from the warning requirement. The proposed amended rule deleted that subsection.

The Commission originally exempted utilitarian objects because of the practical problems of putting health warnings on many different and varied objects. The Commission was also sensitive to the need to avoid diminishing the seriousness of the required warnings. However, the United States Court of Appeals for the District of Columbia Circuit ruled that Congress had not granted the Commission authority to create the exemption for utilitarian items.[15] Consequently, the proposed amended rule deleted the exemption.

In response to the notice, twenty-nine commentors indicated that Congress did not intend to include utilitarian items in the warning label requirement of the Smokeless Act.[16] Of these, twenty were members of Congress who indicated their belief that Congress intended to exempt utilitarian items.[17] Most of these comments argued that Congress had modelled the Smokeless Act on the Federal Cigarette Labeling and Advertising Act ("Cigarette Act"), which serves as precedent for exempting utilitarian items.[18]

The Commission also considered these same arguments in its original rulemaking under the Smokeless Tobacco Act. In promulgating the rules, the Commission noted that based on the comments received and its review of the legislative history of the Smokeless Tobacco Act, it believed that Congress did not intend to treat smokeless tobacco products the same as Cigarettes.[19] Thus, the Commission did not use the utilitarian item exemption in the Cigarette Act as a legal basis for its original exemption, but rather as practical guidance as to what types of materials should be covered.

Moreover, the position advanced by these comments were advanced by amici and specifically rejected by the court of appeals in *Public Citizen*. There, the court stated that the Smokeless Act appears, in a most straightforward manner, to require that utilitarian items used for promotional purposes contain warning labels, and that the cigarette laws cannot serve as a precedent for utilitarian item advertising for smokeless tobacco products.[20] While the Commission appreciates the views expressed by these commentors, it believes it is nontheless bound by the court's order in *Public Citizen* to delete the § 307.4(b) exemption for utilitarian items.

Several of these commentors, aware of the *Public Citizen* decision, urged the Commission to avoid unreasonable requirements and to reach practical solutions to the problems posed by placing warnings on utilitarian objects.[21] By creating safe harbors, rather than mandatory, inflexible requirements for complying with the warning requirements, the Commission believes the final regulations do impose a practical and reasonable approach.

C. Redesignation of § 307.9, § 307.10 and § 307.12 as § 307.10, § 307.11 and § 307.12

The final rule adopts the renumbering of sections as described in the proposed rule. The three final sections of the rule are redesignated to accommodate the insertion of the new § 307.9 which sets forth the requirements for disclosure of the health warnings on utilitarian items.

D. Amendments Through New Rule 9 (§ 307.9), Entitled "Requirements for Disclosure on Utilitarian Object Advertising"

The proposed regulation added a new section to set out the requirements for displaying the health warnings on utilitarian items. Proposed § 307.9 was divided into three subsections, each one containing a separate requirement for the display of warnings on utilitarian objects: the conspicuousness of the warnings—in terms of legibility, format and size (proposed § 307.7(a)); the requirements regarding the permanence and durability of the warning (proposed § 307.7(b)); and the placement and proximity of the warnings (proposed § 307.7(c)); Each of these issues, as well as three new subsections—§§ 307.7 (d), (e) and (f)—are discussed separately below.

1. Requirement of Conspicuousness

a. *Legibility and format.* Subsection (a) of the proposed rule tracked the requirements for disclosure in print advertising by mandating that the warning be in the circle and arrow format in the same configuration as set forth in the existing § 307.7(b), and by requiring the warning to be in a clear and legible type in contrast with the surrounding printed material. The commentors accepted the circle and arrow format and the size of the statement in relation to the circle and arrow, as well as the requirements that the warning statement be in a clear, legible and contrasting type. Accordingly, no change is made to this part of subsection (a).

b. *Warning size provisions for print ads in existing regulations.* Proposed subsection (a) also provided a method for determining the size of warnings on utilitarian objects: The warning statement would be deemed conspicuous if it followed subsections 307.7 (c) and (d) of the current regulations which set forth size criteria for conspicuous warnings in print ads. Those sections allow for two alternative means of ensuring the conspicuousness of the warnings in print ads; the proposed amendments also allowed for use of either alternative as the means for ensuring that the warning is conspicuous on utilitarian items.

Under the first alternative (existing subsection 307.7(c)), the warning statement and the rule must be printed in a color that contrasts with the background on which the circle and arrow are printed. In addition, the color of the field within the circle and arrow must contrast with the background of the advertisement on which they appear. Under the second alternative (subection 307.7(d)), the warning statement and the rule must appear in a clearly visible color against a solid but not necessarily different background. This alternative would cover the situation where the warning is placed as a transparency directly onto the ad. Both alternatives contain twelve different size specifications for the warnings, depending on the size of the print ad on which they appear. In this second alternative, however, because there is no contrast to draw the reader's eye to

[15] *Public Citizen* v. *Federal Trade Commission*, 869 F.2d 1541 (D.C. Cir. 1989, *aff'g*, 688 F. Supp. 667 (D.D.C. 1988).

[16] Comm'n Pub. Docket No. 215–72, 8:1; 9:1; 13:1–2; 21:2,7; 24:21; 27:2; 44:1–2; 47:1; 48:1; 50:1; 60:1; 61:1; 66:1; 67:1; 70:1; 71:1; 73:1; 79:1; 81:1; 82:1; 83:1; 85:1–2; 86:1; 87:1; 88:1; 89:1; 93:1; 94:1.

[17] *Id.* at 47:1; 48:1; 50:1; 51:1; 60:1; 61:1; 66:1; 67:1; 70:1; 71:1; 73:1; 81:1; 82:1; 83:1; 85:1; 85:1–2; 86:1; 87:1; 88:1; 89:1; 93:1.

[18] 15 U.S.C. § 1331 *et seq.*

[19] 51 FR 40005 at 40007 (1986).

[20] *Public Citizen*, 869 F.2d at 1555. The court did not have to rule whether utilitarian items were "advertising" within the meaning of the Act because the Commission had conceded for purposes of the litigation that they were. Nonetheless, the court stated its own belief that utilitarian items were comprehended by the Act's terms.

[21] Comm'n Pub. Docket No. 215–72, 51:1; 60:1; 61:1; 68:1; 70:1; 71:1; 85:1; 87:1; 88:1; 89:1.

the warning, the regulation specifies a warning approximately 30 percent larger than the warnings with contrasting backgrounds.

c. *Proposed § 307.9(a).* Under the current regulations, the size of the warning is determined by the size of the advertisement. Proposed § 307.9(a) was designed to describe how to determine the size of the advertisement when the advertising appears on a utilitarian object. Because of the many different types and shapes of utilitarian items, the Commission could not possible dictate safe harbors for each different type of object; nor can the Commission foresee the many types of objects that will be used in the future to advertise smokeless tobacco products. Instead, the Commission proposed a method for determining warning size which could be used for any type of utilitarian item. That method involved measuring the advertising display area of the object, and then choosing the corresponding warning size from the existing regulations.

The proposed rule did not specify what constitutes the advertising display area of an object, but broadly defined it as "the visible area on which the brand name, logo or selling message appears." Proposed § 307.9(a) also provided several examples of what constitutes the advertising display area on specific types of utilitarian objects—*e.g.,* t-shirts, caps and cuspidors.

Finally, proposed § 307.9(a) also included a proviso that in no case must the warning size exceed the size of the largest print on the object. This proviso was meant to cover the situation where a comparatively large utilitarian item bore a very small logo by providing some proportionality between the logo and the warning so that the warning would not dwarf the logo.

d. *Comments about warning size and proportionality.* In its invitation to comment, the Commission sought comment on the proposed definition of advertising display area, and specifically asked whether the regulation should provide a narrower definition, and whether the proposed definition would ensure that the warning statement on utilitarian objects was conspicuous. The Commission also asked what specific definitions would provide for greater certainty.[22]

The issues of the size and proportion of the warnings and definition of advertising display area generated more comments than any others. The definition of advertising display area is the single most difficult and important issue in the regulation because the size of the warning is determined by the size of the display area. Most of the comments were critical of the Commission's definition of advertising display area for producing warning sizes that were either disproportionately large or small.

Ten members of Congress urged the Commission to narrow the definition so that the dispaly area would not include the entire visible area of the object, but only the area taken up by the brand name, logo or selling message, or alternatively, that area plus a certain percentage.[23] Twelve industry members also advocated this position.[24] The Smokeless Tobacco Council, for example, asserted that the proposed definition does not provide for proportional warnings and in some instances leads to absurd results.[25] Five industry groups noted that the definition encourages larger logos, brand names, or selling messages.[26] One company asserted that the current definition will result in such large warning statements that it expects its customers either to stop writing their names on promotional items or increase the size of their name to a much larger size so that it is not overshadowed by the warning statements.[27]

In contrast to the position taken by industry, size health and consumer groups commented that using the standards established for print ads results in warnings that are too small.[28] One expressed concerns that by tracking the requirements for print ads, the proposed rule fails to take into account the difference in how ads on utilitarian products are viewed.[29] Public Citizen noted that print advertisements are usually read at close range while held steady, while warnings on utilitarian items may be read from further distances, printed on uneven surfaces, and often viewed in motion.[30] They expressed concern that the regulations, geared primarily toward full-page advertisements, results in disproportionately smaller warnings as the object increases in size.[31]

These disparate comments reflect the enormous practical difficulty involved in promulgating regulations which specify the appropriate warning size on utilitarian items. However, the Commission does not believe that, as proposed, the regulation would result in warnings that are too large or too small. With respect to the concerns that warnings may be too small, the Commission notes that, as argued by the industry, the proportion of the display area of a utilitarian item that is occupied by the brand name or logo is likely to be far smaller than in a print ad. Thus, the warnings required by straightforward application of the current warning size for print advertisements does reflect a practical increase in the warning size.

With respect to arguments that this increase, together with the atypical configuration of certain utilitarian objects, such as umbrellas, produces warnings that are inappropriately large, the Commission also finds that no changes in the regulation are necessary. The Commission believes that the alternative suggested by industry—*i.e.,* to tie the warning size exclusively to the size of the brand name, logo or selling message, regardless of the size of the object—will produce inconspicuous warning sizes under other circumstances. For example, this could result in a large sweatshirt and a small mug bearing the same size warning because each displayed the same standard size logo.

Moreover, the Commission emphasizes that the regulation sets out safe harbors rather than mandated warning sizes. Thus, to the extent that the industry believes that the warning specified by the regulation is too large on any particular item, it may use a smaller warning, so long as it can show that it meets the Act's requirement of conspicuousness. To determine whether a warning size adopted by the industry is conspicuous, the Commission will require reliable evidence showing that that warning is conspicuous.

e. *Size and proportionality provisions of final rule.* The Commission has adopted a final rule which provides several alternative methods for determining the required warning size. As in the proposed rule, the warning size can be determined by measuring the display area of the object, and then choosing the corresponding warning size as set forth in § 307.7 of the current regulations. The definition of advertising display area remains the same, although it is clarified that the display area is limited to the surface on which the ad appears. For example, if a logo appears on the back on a t-shirt, the back of the

[22] 54 FR 31541 at 31544 Question 2 (1989).

[23] Comm'n Pub. Docket No. 215–72, 47:2; 48:2; 49:1; 59:1; 70:1; 79:2; 80:1; 87:1; 88:1; 89:1.

[24] *Id.* at 7:1; 10:1–2; 12:1; 19:1; 21:4; 24:35–36; 27:1,9–10; 29:1; 39:1; 59:1.

[25] *Id.* at 24:35.

[26] *Id.* at 24:43; 27:9; 32:1; 55:1; 94:1.

[27] *Id.* at 32:1.

[28] *Id.* at 26:9; 41:1; 42:1; 53:2; 74:4; 76:3.

[29] *Id.* at 26:9.

[30] *Id.* at 74:4.

[31] *Id.* at 74:3.

t-shirt is the display area; if it appears on the sleeve, the display area is the sleeve.

In addition, the final rule contains a proviso which takes into account the comments received, and provides for basing the warning size on the size of the brand name, logo or selling message, when the display area method of measuring produces a disproportionate warning. The proviso set forth in the proposed rule stated that: "However, in no case must the size of the warning statement exceed the size of the largest size type in a display area." The comments were critical of the proposed proviso on two counts. First, by linking warning size to letter size, the proviso ignored the role played by logos, often the key communication device in an advertisement, and created a loophole whereby a large and powerful image could be used with very small and insignificant wording.[32] Second, limiting the type size of the warning statement to the largest type size in the selling message, could result in a warning statement that would dwarf a one- or two-word selling message, since the warnings are from seven to ten words.[33]

Accordingly, § 307.9(a) of the final rule contains a different proviso which the Commission believes adequately addresses the proportionality issues raised by the comments. The proviso states that in no case must the diameter of the circle in which the warning appears exceed the longest line displayed in the brand name, logo or selling message. This prevents a warning that is disproportionately larger than the brand name or logo. For example, the display area on a typical men's large size t-shirt is between 470 and 720 square inches and would, therefore, require a Number 7 size warning, which has a circle diameter of either 3¼" (under § 307.7(c)) or 4¼" (under § 307.7(d)). However, if that same t-shirt bears only the name Skoal written in a 2" line, then the proviso allows a warning with a circle diameter of no more than 2". In that case, either the Number 6 or Number 4 warning (under §§ 307.7 (c) and (d), respectively), would be deemed conspicuous. When used in conjunction with §§ 307.7(c) and (d), the Commission believes that the proviso will substantially limit the situations in which basing the warning size on the display area size produces disproportionately sized warnings.

In addition, the proviso is not limited to the particular advertisement's words, but to the longest line (horizontal, vertical or diagonal) in the brand name, logo or selling message. Thus, in the Skoal t-shirt example above, the smaller warning size would not be available if a logo symbol appeared on the shirt in conjunction with the brand name, and the longest line in that picture exceeded 2". Moreover, the Commission recognizes what numerous commentors noted, that the term "brand name, logo or selling message" may not be broad enough to encompass the many different types of images used in advertising.[34] According to these comments, many ads feature distinctive colors or shapes which in and of themselves are associated with the advertised product, and which should, therefore, be considered as part of the ad.[35] Thus, § 309.7(a) also stipulates that the Commission considers a logo to include any brand specific characteristics of a smokeless tobacco product, including but not limited to any recognizable pattern or colors or symbols associated with a particular brand.

2. Requirements Regarding Durability and Permanence of Warnings

Proposed § 307.9(b) required that the warnings be "printed, embossed, embroidered or otherwise affixed to the utilitarian object with the same permanence and durability as the product name, logo or selling message." This requirement was inserted to assure that the warning would last at least as long as the advertising on the utilitarian object.

Several comments maintain that it is technologically infeasible to produce a legible warning under certain circumstances. For example, two specialty advertising manufacturers described the obstacles presented by embroidery and silk screening to placing warnings on three major product categories: hats, shirts and jackets, and patches.[36] These technical difficulties result from a combination of the limited space available for the warning, the mechanical restrictions of the machinery used, the properties of the fabrics they must label, and the size, legibility, and proximity requirements of the warnings. Consequently, these and other commentors, such as the Smokeless Tobacco Council, assert that items on which conspicuous and legible warnings are not technologically feasible, should be exempt or should be permitted to bear on an alternative form of warning.[37]

As explained in subsection 4 below, the final rule does not exempt any items from the rule's warning requirement. At the same time, the Commission recognizes the limitation of certain technologies—*i.e.*, embroidery in producing legible, multiwork warnings, and does not want to impose requirements with which compliance is impossible or which would result in illegible warnings. Therefore, the final rule has changed § 307.9(b) to provide that the warning statement must be affixed to the utilitarian object with a permanence and durability that "is comparable to" the permanence and durability of the brand name, logo or selling message. This change recognizes the technical difficulties in, for example, embroidering or engraving a legible warning, but signals that warnings must nonetheless compare in durability to the brand name or logo.

For example, for items that are laundered, the colorfastness of the warning with respect to laundering must be comparable to the colorfastness of the brand name, logo or selling message Similarly, for items that will not be laundered, the colorfastness and durability of the warning must be comparable to that of the brand name. By allowing alternative methods of meeting the requirements for durability and permanence, the final rule provides manufacturers with additional compliance options.

3. Placement and Proximity of the Warnings (§ 307.9(c))

Section 307.9(c) of the proposed rule required the placement of the warning in a conspicuous and prominent location on the object—"one that is proximate to and on the same surface as the smokeless tobacco brand name, logo or selling message, whichever is the most conspicuous, and one that is visible when the brand name, logo or selling message is visible". In the Notice of Proposed Rulemaking, the discussion of this section made clear that for multi-surfaced objects, the warning must appear on each surface on which the brand name, logo or selling message appears.

Three health organizations and one Federal Agency supported or recommended strengthening the proximity and multiple warning requirements.[38] Four members of

[32] *Id* at 26:14.

[33] *Id* at 24:36, exhibit 45; 27:10; 44:4; 47:2.

[34] Comm'n Pub. Docket No. 215–72, 16:2; 28:1; 31:1; 33:1; 37:1; 38:2; 40:1; 41:1; 43:2; 53:2; 62:1–2, 74:3; 76:3; 92:1.

[35] *Id.* at 28:1; 31:1; 33:1; 37:1; 38:2; 40:1; 41:1; 43:2; 53:2; 62:1–2; 74:3; 76:3; 92:2.

[36] *Id.* at 21:2–5; 27:2–9.

[37] *Id.* at 21:2–5; 24:38 with exhibits 29–32; 27 2- 2: 44:4; 79:2; 80:1; 85:2; 89:1.

[38] *Id.* at 2:1; 5:1; 26:7; 54:2.

Congress contended that requiring multiple warnings is unreasonable, and that one warning per item will convey the message.[39] Two industry groups and the Smokeless Tobacco Council concurred, and noted that multiple warning requirements impose a burden not found in the regulation's other advertising or packaging requirements.[40] For example, the current rules require only a single warning on packaging and multipage advertising pamphlets and print ads.[41] However, for newspaper, magazine and periodical advertisements of more than one page, the warning size is determined by the aggregate area of the entire advertisement.[42]

The Commission recognizes that there are differences between print and utilitarian item advertising. The most obvious difference is that utilitarian items can move and turn, thereby allowing a brand name, logo or selling message to be visible from different angles. Hence, if an ad and warning are on separate surfaces, one could view the ad without the warning, in contravention of the Act's purpose to provide a clear association between a product and warning on all species of advertising. Nonetheless, the Commission does not intend to impose more stringent requirements on utilitarian items than on print advertising.

In light of these considerations, the Commission has decided to provide two options with regard to placement and proximity. As in proposed § 307.9(c), a warning can be placed on each display surface on which the brand name, logo or selling message appears. In that case, the warning will be determined by the size of the display area. In addition, advertisers have the option of displaying one warning per object. In that case, however, the size of the warning will be determined by the aggregate of each display area on which brand names, logos or selling messages appear.

4. Alternative Warnings on Certain Small Items (§ 307.9(d))

Although the proposed rule did not exempt any utilitarian items from the warning requirements, twenty-five comments specifically advocated exempting items that are so small that compliance is impractical or impossible.[43] These comments suggested exempting items from between six and fifteen square inches. Some claimed that the physical impossibility of placing the warnings in a conspicuous and legible manner on small items effectively bans their distribution.[44] Others maintained that warnings on such small items would not be legible during normal use,[45] or noted that some items are even smaller than one-half inch, the circle diameter of the smallest warning.[46]

The Notice of Proposed Rulemaking and the proposed regulation did not provide for exemptions, and the Commission did not receive many comments opposing exemptions. The Coalition on Smoking OR Health ("the Coalition"), however, specifically urged the Commission to provide no exemptions on the basis of size, asserting that if "it is not possible to put a health warning on a particular product, then it is illegal to use that item as a vehicle for advertising. Congress has carved out no exception and the FTC should carve out no exception."[47] Moreover, in its second comment, the Coalition maintained that "the smokeless tobacco industry may choose to advertise its products on utilitarian items that are small. This choice does not permit it to circumvent the law by obtaining an exemption from the health warning requirements for such items."[48] The Coalition also noted that many small items, such as patches and beltbuckles, serve as important advertising tools for the industry.

The Commission agrees that an exemption from the warning requirements for small items would create a loophole and might actually result in increased advertising of exempt items. The Smokeless Tobacco Council has commented that the types of utilitarian items promoted by the industry vary significantly from year to year;[49] and, another commentor familiar with the premium give-away industry has noted that "diversification of novelty item manufacture is great and opportunities to transfer production and sale efforts from one product to another are frequent."[50] If the industry were to shift its resources into small utilitarian items, the warning requirements would be defeated.[51]

On the other hand, the Commission sees no value in mandating the type of disclosure requirements provided for in §§ 307.9 (a), (b), and (c) for small utilitarian items if it is impossible to print a legible warning. Many of these items have a relatively short period of use and are seen only by the user. Hence, the final rules provide for two alternative warning methods for those items on which the largest surface area is less than 8 square inches and which are seen predominantly by the user.

The first alternative allows for the printing of the warning on the package of an item under 8 square inches, if the item is disseminated in a package to the consumer. The entire surface area of the package would comprise the display area for purposes of determining warning size in accordance with §§ 307.7 (c) and (d) of the current regulations. Thus, for example, the warning may be placed on a package of golf balls, or on a package containing a key chain, if the key chain is individually packaged when disseminated. The second alternative allows for the placement of the warning in the form of a sticker or decal directly onto the item. The warning could be in the form of a sticker or decal, and in the Number 1 warning size as set forth in §§ 307.7 (c) and (d) of the current regulations. The item should be packaged in such a way to ensure that the sticker cannot be removed before placement in the hands of the consumer.

Utilitarian objects eligible for the alternative warnings would include such items as snuff can openers, golf balls, golf ball markers and greens repair tools, pens and pencils, key chains, and rings, jewelry, beltbuckles, penknives and nail files. Patches, on the other hand, whose principal purpose is to display the brand name or logo, do not qualify for this alternative. Accordingly, patches are subject to the size, permanence and durability, and placement and proximity requirements set forth in §§ 307.9 (a) through (c).

5. Special Rule for Hats (§ 307.(e))

The Commission received many comments concerning fabric baseball-style hats which are one of the most popular utilitarian items used for advertising. In 1988, over 354,000 hats with smokeless tobacco logos were disseminated to consumers, comprising over 42% of the smokeless utilitarian items sold or given away that year.

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[39] *Id.* at 47:2; 61:1; 71:1; 89:1.

[40] *Id.* at 21:5; 24:41; 27:11.

[41] §§ 307.6(a) and 307.7(e).

[42] § 307.7(e).

[43] Comm'n Pub. Docket No. 215–72, 3:2–6; 8:1; 9:1; 10:2; 11:1; 17:1; 22:1; 24:24, 33; 30:1; 35:1–2; 44:1; 47:2; 48:2; 49:1; 66:1; 67:1; 68:1; 71:2; 78:1; 79:1; 80:1; 88:1; 89:1; 93:1; 94:1.

[44] *Id.* at 3:4–5; 24:24; 44:1.

[45] *Id.* at 7:1; 22:1.

[46] *Id.* at 3:4–5.

[47] *Id.* at 26:12.

[48] Comm'n Pub. Docket No. 275–63, 2–3:6.

[49] *Id.* at 2–2:6.

[50] *Id.* at 2–1:1.

[51] For these same reasons, the Commission has not granted exemptions where affixing the warning would present technical difficulty; instead, as set forth in section II(D)(4) above, the Commission has allowed alternative methods for meeting the requirements of durability and permanence.

Section 307.9(a) of the proposed rule stated that the display area for a baseball cap would be the conical area of the cap, excluding the brim. Since these adjustable hats usually come in one size, the Number 4 warning size would have been deemed conspicuous pursuant to §§ 307.7 (c) and (d). Seven headwear companies commented that the display area for caps should include only the front, decorated panel for two reasons: first, because the logo is visible only from the front; and second, because the remaining panels, usually consisting of mesh, ventholes and seams, are not available as a display area.[52] The Commission agrees that the display area on the hat should not include the entire conical area, since the smokeless advertising is confined exclusively to the front panel. However, to limit the display area to the front panel would result in the Number 2 warning size which the Commission considers inconspicuous on a hat. This is particularly true because the smokeless brand names and logos on hats are often recognizable, if not readable, from a distance. Thus, § 307.9(d) of the final rule provides for the placement of the Number 3 size warning, which the Commission deems conspicuous under the circumstances.

6. Procedure for Obtaining Exemption for Items Such As Food Products To Which the Health Warnings Could Logically Apply (§ 307.9(f))

The Commission recognizes that there may be some utilitarian items on which the health warnings may have no value because they will actually be misleading. For example, the Smokeless Tobacco Council has noted that one of its members is negotiating with a non-tobacco business which wishes to use a smokeless tobacco trademark on a barbecue sauce.[53] They contend and the Commission agrees that the warning in that case would be misleading, since consumers would assume that it pertained to the barbecue sauce. Hence, § 309.7(e) of the final rule has been added to establish a procedure for obtaining an exemption for items such as food products to which a health warning could logically apply.

The procedure essentially tracks § 307.4(c) of the current regulations which provides for the submission of rotational plans to the Commission, but delegates the authority to approve such plans to the Associate Director for Advertising Practices in the first instance. Similarly, the new section delegates to the Associate Director the authority to grant the exemptions. Where significant issues not previously considered by the Commission are present, however, the Associate Director must refer the exemption request to the Commission.

The Commission's authority to grant such an exemption was recognized by the United States Court of Appeals in *Public Citizen*. There, the court acknowledged the *de minimis* authority of administrative agencies "to create even categorical exceptions to a statute 'when the burdens of regulation yield a gain of trivial or no value.' "[54] The Commission believes that the smokeless warnings on food products would have no value if consumers read the warning to apply to the food, rather than to smokeless tobacco. The Commission emphasizes, however, that the exemption is available only in the very limited situation where the warning would have no value, such as on items to which a health warning could logically apply. A food product manufactured and marketed by a non-smokeless tobacco company would be an appropriate candidate for such an exemption both because it is a food to which a health warning could logically apply, and because it is likely to be sold in grocery stores, rather than disseminated in conjunction with smokeless tobacco products. In considering an exemption request, the Commission will look at such factors as evidence that consumers would be misled regarding the warnings' application.

E. Amendment to Redesignated Rule 12(b) (§ 307.12(b)) Rotation of Warnings

The Smokeless Tobacco Act and regulations require smokeless tobacco companies to rotate the three warnings every four months for each brand. Redesignated § 307.12(b) provides a non-exclusive list of the ways that rotational plans for different types of advertising may satisfy the Act, emphasizes that there may be more than one method of compliance, and expressly provides that any plan may take into account practical constraints on the production and distribution of advertising. Subsection (c) requires the submission to the Commission of samples of advertising as part of the company's compliance plan.

In its proposed amendments, the Commission added a sentence to redesignated § 307.12(b) to provide a method for rotating the warnings on utilitarian objects, allowing rotation according to the date that the object is either manufactured or ordered. In its Notice, the Commission also specifically asked if there were other appropriate methods which companies could utilize to rotate the warnings.[55]

Two commentors noted that rotation according to date of order presents problems since it is unclear if by "date of order", the rule means the date the item is ordered by the manufacturer, distributor, retailer or consumer.[56] While members of the industry who commented indicated that rotation by date of manufacture is preferable,[57] others noted this method created potential loopholes: a company could manufacture an entire year's supply of the item during the four-month period when the warning that the industry perceives least effective is scheduled to appear.[58] Likewise, if the date of order is the deciding factor, a local distributor could order a year's supply during the same period.

The Commission notes that the utilitarian object advertising market presents unique problems with regard to rotation of warnings. Unlike traditional print advertising which may only be disseminated during a given period if it contains the appropriate warning, utilitarian items may be ordered in bulk once a year or less. Under the proposed regulation, only one warning would be required, regardless of the distribution period. Such a result would frustrate the Act's requirement that the warnings rotate.

The Commission, therefore, reconsidered the appropriate method for rotation so that each of the three warnings are displayed throughout the year. Two commentors suggested requiring a plan that would assure that the respective warnings be used approximately an equal number of times during a one-year period,[59] while another suggested splitting any large manufacturing batch falling within one four-month period into thirds, with each third containing a different warning.[60]

The Commission has determined that the final rule should provide for rotation according to the date the materials are disseminated, and not on the date of order or manufacture. However, the Commission recognizes that this requirement may produce hardship for companies that cannot foresee at the

[52] Comm'n Pub. Docket No. 215–72, 10:1–2; 19:1, 20:1; 23:1; 39:1; 59:1; 71:1;.

[53] *Id.* at 24:27–28.

[54] *Public Citizen*, 869 F.2d at 1556 (quoting *Alabama Power Co. v. Costle*, 636 F.2d 323, 360–61 (D.C. Cir. 1979)).

[55] 54 FR 31541 at 31544 Question 3 (1989).

[56] Comm'n Pub. Docket 215–72, 2:2; 54:3.

[57] *Id.* at 21:5; 24:44; 27:11.

[58] *Id.* at 2:2; 26:15; 43:2.

[59] 26:15; 43:2.

[60] *Id.* at 2:2.

time of ordering what their dissemination schedules will be and, consequently, in what proportions the warnings should be distributed among the objects ordered. Hence, the final rule provides that the Commission will consider a plan in compliance under which the objects comprising each order display all three warnings in equal proportion, and are disseminated either (1) in groups displaying a single warning in sequence per four-month period over a total dissemination period of three or more such four-month periods, or (2) at random, if dissemination is to occur in fewer than three such periods.

In addition, the Commission has also applied this rotational method to point-of-sale and non-profit-of-sale promotional materials, such as leaflets, pamphlets, coupons, direct mail circulars, paperback book inserts, or non-print items. Like utilitarian items, this type of advertising is subject to the same type of bulk ordering which, in many cases, may prevent warning rotation. Thus, the Commission has altered its current provisions relating to rotational plans for these promotional materials to conform to the rotational requirements for utilitarian objects.

III. Other Comments to the Proposed Regulations

Nineteen members of Congress and thirteen specialty advertising industry members commented that the rule should be limited to those items which contain a selling message in conjunction with a brand name or logo.[61] They argue that items with only a brand name or logo do not "arouse a desire to buy" as specified by the court of appeals' definition of advertising,[62] and should therefore be exempt from the warning requirements. For example, one congressional comment stated that advertising "requires some attempt to arouse a desire to buy. The mere placement of a name on a product with no selling message does not fit that definition, in my view." [63]

The Commission realizes that some forms of utilitarian advertising appear less clearly promotional than others. For example, a polo shirt with a smokeless tobacco brand name printed discreetly on the shirtsleeve is different from a t-shirt emblazoned with a picture and a brand slogan. Nonetheless, the Commission's reading of the definition of advertising under the Smokeless Tobacco Act as set forth in the decisions of the United States District Court and Court of Appeals for the District of Columbia does not distinguish between the simple display of a product or brand name and the display of a brand name together with a promotional message. The purpose of both displays is to carry the smokeless brand name before the public for the purpose of encouraging sale of the product.

Furthermore, there certainly is no question that a magazine page printed with only the word Skoal or Redman constitutes advertising or that a warning is required in that case. Nor have any of the commentors advocated otherwise. The Commission sees no valid reason to treat a brand name as an advertisement when it appears on a printed page, but not when it appears on a hat, t-shirt or golf ball.[64] Neither the Act nor the regulations distinguish between the type or degree of advertising for purposes of the warning requirement.

Many industry members also asserted that the clothing and apparel they manufactured with smokeless brand names were first and foremost clothing and apparel. As one manufacturer stated: "A belt buckle is nothing more than what it is, even if it has a company's logo on it. It is an article of clothing that an individual purchases for his own personal use." [65] The Commission agrees that, by their very nature, utilitarian items serve a purpose apart from their advertising. Nonetheless, they also function as advertising, as a means for companies to bring their brand names before the public, and to reach audiences that may not be reached through other forms of advertising. As such, they are subject to the Act's warning requirements.

The Smokeless Tobacco Council and the Washington Legal Foundation have asserted that the proposed rule violates several provisions of the U.S. Constitution. They argue, *Inter alia*, that the proposed rule imposes a de facto ban on certain utilitarian items because it provides no exemptions or alternatives for items where compliance is technologically infeasible, and that such a ban violates First Amendment principles regarding commercial speech.[66] However, the Commission believes that such arguments are essentially directed at the Smokeless Tobacco Act, which requires warnings to appear in conjunction with advertising; and, as an administrative agency, the Commission does not have authority to determine the constitutionality of the statutes it enforces.[67] In any event, the Commission believes that the final rule, by providing for alternative warning schemes and flexible safe harbors, obviates these concerns.

In addition, the Smokeless Tobacco Council believes that the proposed regulations interfere with the smokeless tobacco companies' rights to exploit their valuable trademarks for non-tobacco uses.[68] Specifically, they argue that the regulations violate their rights to the equal protection of the trademark laws compared to other trademark users, and their Fifth Amendment rights not to have their trademarks taken for a public purpose without compensation. These arguments, however, are directed to the constitutionality of the Smokeless Tobacco Act, as well as the court's interpretation of the Act in the *Public Citizen* case.

IV. Regulatory Flexibility Act

When the smokeless tobacco regulations were first proposed, the FTC certified that the Regulatory Flexibility Act requirement for regulatory analysis was not applicable because the regulations did not appear to have a significant economic impact on a substantial number of small entities. 51 FR 40005, 40014 (1986). In its subsequent Notice, the Commission noted that the proposed amendments did not change the regulations sufficient to alter its previous "no impact" determination; nonetheless, in order to ensure that no substantial impact was being overlooked, the Commission requested

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[61] *Id.* at 9:1; 10:1; 13:2; 17:1–2; 21:7; 22:1; 24:39,41; 29:1; 30:1; 35:1; 47:1; 48:1; 49:1; 51:1; 61:2; 63:1; 64:1; 67:1; 68:1; 69:1; 70:1, 71:1; 72:1; 81:1; 82:1; 83:1; 85:2; 87:1; 89:1; 93:1; 94:1.

[62] *Public Citizen*, 869 F.2d at 1554.

[63] *Id.* at 85:2.

[64] Indeed, many of the items cited in the Commission's brief before the court of appeals in the *Public Citizen* litigation—i.e., golf balls and cuspidors—are unlikely to carry more than the simple display of the smokeless tobacco brandname.

[65] *Id.* at 22:1.

[66] *Id.* at 24:15–18, 44:2.

[67] *Howard Enterprises, Inc. et al.*, 93 FTC 909, 941 (1979). In any event, the Commission believes that the Smokeless Act is not violative of the Constitution. The First Amendment does allow regulation of commercial speech, even if not misleading and otherwise lawful, if: (1) The governmental interest in regulating the speech is substantial; (2) the regulation directly advances the governmental interest; and (3) the restrictions do not burden substantially more speech than is necessary to further the government's legitimate interest. *See Central Hudson Gas & Electric* v. *Public Service Commission*, 447 U.S. 557 (1980). Here Congress' interest in warning the public about the health consequences of smokeless tobacco use is clearly substantial. The Smokeless Act directly advances that interest by ensuring that consumers see the informative health warning each time they view a smokeless tobacco advertisement. Finally, the Act burdens only the speech—the smokeless tobacco brandnames, logos and selling messages—that is necessary to serve that interest.

[68] Comm'n Pub. Docket No. 215–72, 24:10, 25–30.

public comment on the effect of the proposed regulations on costs, profitability, competitiveness, and employment in small entities. 54 FR 31541 (1989).

The Commission received 49 comments regarding the economic burden that would be placed on the small businesses that produce or distribute utilitarian objects bearing smokeless tobacco brand names, logos and selling messages. Eighteen members of Congress wrote that the proposed rule would have a significant impact on small business,[69] many urging some form of alternative warning schemes. Thirty-one small businesses submitted comments on the proposed rule's economic impact.[70] These included manufacturers of headwear, apparel, belt buckles, jewelry, pouches and embroidered emblems, leather cutters, and a screen printing business. While most of these comments argue that some small entities will be adversely affected, they focus primarily on the compliance obligations imposed by the Smokeless Act as interpreted by the court of appeals. Moreover, while all emphasized that the economic burden of adding the warnings would be great, no specific information was submitted from which to measure the regulations' impact on an industry-wide basis.

The Specialty Advertising Association International ("SAAI"), which represents 4,400 firms that manufacture or sell utilitarian objects imprinted with advertising, noted that its members were predominantly small businesses, with 80% of the manufacturers and 95% of the distributors having annual sales below $2 million. Noting that it was difficult to provide the precise number of companies and the dollar volume that ultimately would be affected by the proposed amendments, SAAI estimated that there were hundreds of firms potentially affected with sales to the smokeless tobacco industry in the many thousands of dollars.[71]

The Small Business Administration urged the FTC to obtain from the specialty advertising industry estimates of economic impact that would enable the FTC to make reasonable and accurate estimates of small business impact which are required by the Regulatory Flexibility Act.[72]

[69] *Id.* at 8:1; 9:1; 47:2; 48:1; 49:1; 50:1; 60:1; 66:1; 67:1; 73:1; 78:1; 80:1; 81:1; 85:2; 86:1; 88:1; 89:1; 93:1.

[70] *Id. at* 3:5; 6:1; 7:1; 10:1; 11:1; 12:1; 13:1–2; 14:1; 15:1; 17:1; 19:1; 20:1; 21:1–6; 23:1; 27:1, 3, 6–7, 11; 29:1; 30:1; 32:1; 34:1; 35:1; 39:1; 55:1; 56:1; 58:1; 59:1; 63:1; 64:1; 65:1; 90:1; 91:1; 94:2.

[71] Comm'n Pub. Docket No. 215–72, 3:2–6.

[72] *Id.* at 45:1.

Subsequently, the Commission reopened the comment period and requested comment on the impact of the proposed amendments on small businesses, specifically the number of small firms affected, and the approximate percentage of smokeless tobacco business that each of these firms handles [73]. Six comments responded to this request. Only The Smokeless Tobacco Institute, however, provided numerical data, stating that at least four businesses employing fewer than 100 people would be affected by the proposed amendments with between .3% and 74% of their business involving smokeless tobacco firms.[74] In addition, at least five businesses employing 100 to 250 people would be affected.[75] Relying on this data, the Commission cannot conclude that a substantial number of small entities will be affected by the proposed amendments.

Moveover, while the implementing regulations may have a significant impact on at least some firms, that impact is likely to be short-term, according to James T. O'Reilly, Esquire, an authority in the field of consumer product regulation. Having spent 16 years counseling the specialty advertising industry, Professor O'Reilly asserted that the claims of adverse economic impact were not substantiated. "By the nature of their business, the premium give-away producers must be adaptable and flexible to meet different needs of changing marketplace demands." [76] He maintained that these small businesses have a real ability to transfer resources to other potential customers with only short term sales transaction costs and not the kind of economic displacement seen in other more capital-intensive contexts. This view is supported by the Smokeless Tobacco Institute's note that smokeless tobacco utilitarian items may vary significantly from year to year as some items are produced and distributed for a one-year period rather than on a year-to-year basis.[77] This suggests that the small utilitarian item firms adapt to irregular ordering by advertisers in the normal course of business.

Nonetheless, the Commission has taken the comments of these small businesses and their representatives into account and accordingly has made several responsive changes in the final rule. First, as detailed in part II(D)(4)(b) of this notice, many headwear manufacturers noted the technical difficulty of embroidering a warning onto a hat. Hence, the final rule drops the proposed requirement that warnings be affixed with the same durability and permanence as the brand name, logo or selling message. Instead, § 307.9(b) of the final rule links the durability of the warning to the reasonable life of the product to which it is affixed. This enables headwear manufacturers to avoid the more costly and difficult task of embroidering a warning, and gives industry more flexibility in complying with the warning requirements.

Second, as many commenters have urged, the Commission has assessed alternative warning schemes, and has provided in § 307.9(d) for the use of warning decals or stickers for those items which are under 8 square inches and viewed predominantly by the user. As described in part II(D)(4)(a), *infra*, this alternative will apply to many types of objects, including nearly all those enumerated by the Smokeless Tobacco Institute as too small to accommodate a warning,[78] and will enable small producers to avoid retooling costs. Finally, the effective date of the regulations has been amended to allow the distribution for up to 12 months after the date of publication of those utilitarian objects already produced at the time of the rule's publication date. This will enable small businesses to sell off inventory and adapt their production facilities for the application and rotation of the warnings.

V. Paperwork Reduction Act

In the Notice of the proposed rule, the Commission noted that the deletion of the exemption for utilitarian items would not affect the information collection requirements (as defined by the rules implementing the Paperwork Reduction Act) contained in the smokeless tobacco regulations. Nothing in the final regulation alters that conclusion.

The required rotational warning disclosures are the "public disclosure of information originally supplied by the Federal government to the recipient for th[at] purpose," and are, therefore, not within the scope of the Paperwork Reduction Act, 5 CFR 1320.7(c)(2) (1988). The Commission has amended the requirement for the submission of plans by marketers of smokeless tobacco products [redesignated § 307.12) in order to give guidance on options for rotating the warnings on utilitarian items. The original requirement was submitted to, and approved by, the Office of

[73] 55 FR 9142 (1990).

[74] Comm'n Pub. Docket No. 275–63, 2–2:11.

[75] *Id.*

[76] *Id.* at 2–1.

[77] *Id.* at 2–2:6.

[78] *Id.* at 2–2:9.

Management and Budget, under OMB Control No. 3084–0082. for use through August 31, 1992.

VI. Effective Dates

The provisions of the Smokeless Tobacco Act that required the display of health warnings in the labeling and advertising of smokeless tobacco products became effective on February 27, 1987, and the portions of the regulation that concerned the submission of plans for the rotation, display and distribution of the warning statements became effective on December 19, 1986. In the Notice proposing the amendments to the regulations, the Commission indicated that the effective date for the regulations displaying the warnings on utilitarian objects would be the date of publication of the final rule.

The Commission received 26 comments requesting that the Commission include a grandfather clause to enable the small businesses that manufacture and distribute utilitarian items to adjust to the new requirements,[79] specifically to sell off inventory, adapt facilities for the application of the warnings, and set up a quality control system for the rotation of the warnings.[80] The Coalition on Smoking OR Health, on the other hand, opposed any such grandfather clause, on the grounds that the industry might stockpile large quantities of utilitarian items without the warnings.

The Commission has considered these comments, and has provided that those utilitarian objects already produced at the time of publication may be distributed for up to 12 months after the effective date. This provision will give small businesses time to adjust to the regulations, yet prevent dissemination of items without warnings beyond 12 months.

List of Subjects in 16 CFR Part 307

Health warnings, Smokeless tobacco, Trade practices.

Accordingly, part 307 of 16 CFR chapter I is amended as follows:

PART 307—REGULATIONS UNDER THE COMPREHENSIVE SMOKELESS TOBACCO HEALTH EDUCATION ACT OF 1986

1. The authority for part 307 continues to read as follows:

Authority: 15 U.S.C. 4401 *et seq.*

2. Section 307.3 is amended by adding paragraph (n) as follows:

§ 307.3 Terms defined.

* * * * *

(n) "Utilitarian objects" means items, other than smokeless tobacco products, that are sold or given or caused to be sold or given by any manufacturer, packager or importer to consumers for their personal use and that display the brand name, logo, or selling message of any smokeless tobacco product. Such items include, but are not limited to, pens, pencils, clothing or sporting goods.

§ 307.4 [Amended]

3. Section 307.4 is amended by removing the following sentence from paragraph (b): "This requirement does not apply to utilitarian objects for personal use, such as pens, pencils, clothing, or sporting goods."

§§ 307.9–307.11 [Redesignated as §§ 307.10–307.12].

4. Sections 307.9 through 307.11 are redesignated as §§ 307.10 through 307.12, respectively.

5. A new § 307.9 is added:

§ 307.9 Requirements for disclosure on utilitarian objects.

(a) In the case of advertisements for smokeless tobacco products on utilitarian objects, the warning statements required by the Act and these regulations must be in a conspicuous and legible type in contrast with all other printed material on the object and must appear within the circle and arrow format. The proportions of the circle and arrow shall be deemed to be conspicuous if in accordance with with those set forth in § 307.7(b). The required warning statement shall be deemed conspicuous if it conforms to the requirements and proportions as set forth in §§ 307,7(c) and 307.7(d). For purposes of determining the size of the warning statement, the display area for an advertisement on a utilitarian object shall be the visible area on which the brand name, logo or selling message appears. For example, the display area for a t-shirt with a brand name, logo or selling message on the front or back is the entire front or back of the shirt, excluding any sleeves. For a t-shirt with a brand name, logo or selling message on the sleeve, the display area is the sleeve. However, in no case must the diameter of the circle exceed the longest line displayed in the brand name, logo or selling message. The Commission considers a logo to include any brand specific characteristics of a smokeless tobacco product, including but not limited to any recognizable pattern of colors or symbols associated with a particular brand.

(b) The warning statement required by the Act and these regulations must be printed, embossed, embroidered or otherwise affixed to the utilitarian object with a permanence and durability that is comparable to the permanence and durability of the brand name, logo, or selling message. For example, if a product brand name or logo is embroidered on a hat, and a legible warning cannot be embroidered in the proper size due to technological limitations, the warning may be affixed to the hat by another method, so long as its permanence and durability is comparable to that of the brand name, logo or selling message.

(c) The warning statement required by this Act and these regulations must be in a conspicuous and prominent location on the object. A conspicuous and prominent location on the object is one that is proximate to and on the same surface as the smokeless tobacco brand name, logo, or selling message, and is visible when the brand name, logo or selling message is visible. If the brand name, logo or selling message is displayed in more than one location on the utilitarian object, the warning must appear proximate to each brand name, logo or selling message. In the alternative, the warning may appear only once on the object; in that case, however, the advertising display area consists of the aggregate of all the surface areas on which any brand names, logos or selling messages appear.

(d) *Small Items.* For those utilitarian objects under 8 square inches which are viewed predominantly by the user, the warning statement required by this Act and by these regulations shall be deemed conspicuous and prominent when:

(1) Printed on the package of an item, if the item is disseminated in a package to the consumer. The entire surface area of the package would comprise the display area for purposes of determining warning size in accordance with §§ 307.7 (c) and (d) of the current regulations; or

(2) Placed in the form of a sticker or decal directly onto the item in the Number 1 warning size as set forth in §§ 307.7 (c) and (d) of the current regulations. The item should be packaged in such a way to ensure that the sticker cannot be removed before placement in the hands of the consumer.

(e) *Hats.* For fabric baseball style hats, the warning statement required by the Act and these regulations shall be deemed conspicuous and prominent in

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[79] *Id.* at 3:3, 6–7; 7:1; 8:1; 9:1; 10:1; 17:1; 21:5; 24:42; 27:1, 11; 35:2; 39:1; 47:1; 49:1; 60:1; 61:1; 66:1; 67:1; 71:2; 79:2; 80:2; 86:2; 87:1; 88:1; 89:1; 93:1.

[80] *Id.*, at 27:11.

the Number 3 size as set forth in §§ 307.7 (c) and (d).

(f) Any manufacturer, packager or importer may apply to the Commission for an exemption from the warning requirements of the Act and these regulations for items such as food products to which the health warnings could logically apply. Authority to grant such exemptions has been delegated by the Commission to the Associate Director for Advertising Practices. Where significant issues not previously considered by the Commission are present, however, those plans will be referred by the Associate Director for Advertising Practices to the Commission in the first instance. This delegation is authorized by section 1(a) of the Reorganization Plan No. 4 of 1961 in order to enhance the efficiency and result in expedited treatment of any request for an exemption. The Commission's discretionary right to review actions of the delegate, and the procedure by which a smokeless tobacco manufacturer, packager, or importer may request full Commission review of the delegate's action are as set forth in § 307.4(c) of these regulations.

Newly redesignated § 307.12 is amended by removing the penultimate sentence in paragraph (b) and adding in its place the following two sentences:

§ 307.12 Rotation, display, and dissemination of warning statements in smokeless tobacco advertising.

* * * * *

(b) * * * A satisfactory plan for point-of-sale and non-point-of-sale promotional materials such as leaflets, pamphlets, coupons, direct mail circulars, paperback book inserts, or nonprint items or for utilitarian objects shall provide for rotation according to the date the materials or objects are disseminated. Because the Commission recognizes that this requirement may produce hardship for companies that cannot foresee at the time of ordering what their distribution schedule will be, the Commission will consider in compliance with this provision a plan under which the materials or objects comprising each order display all three warnings in equal proportion, and are disseminated either (1) in groups displaying a single warning in sequence per four-month period over a total dissemination period of three or more such four-month periods, or (2) at random, if dissemination is to occur in fewer than three such periods. * * *

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By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 91-6642 Filed 3-19-91; 8:45 am]

Billing Code 6750-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Part 100

[Docket No. R-91-1528; FR-3043-F-01]

Amendment to Fair Housing Regulations—Extension of Building Permit Deadline

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Final rule.

SUMMARY: Section 100.205(a) of the Department's Fair Housing regulations (24 CFR 100.205(a)) provides that a covered multifamily dwelling is exempt from the accessibility requirements of the Fair Housing Act if (1) the dwelling is designed and constructed for first occupancy on or before March 13, 1991, or (2) the last building permit or renewal thereof for the dwelling was issued by a state, county or local government on or before January 13, 1990. The Department is amending 24 CFR 100.205(a) to extend the January 13, 1990 permit deadline to June 15, 1990, the date the Department published proposed accessibility guidelines, and the first date on which the Department provided the public with detailed technical guidance on how to comply with each of the Fair Housing Act's accessible design and construction requirements.

EFFECTIVE DATE: April 19, 1991.

FOR FURTHER INFORMATION CONTACT: Merle Morrow, Office of HUD Program Compliance, room 5204, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500, telephone (202) 708-2618 (voice) or (202) 708-0015 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

The Fair Housing Amendments Act of 1988 (Pub. L. 100-430), approved September 13, 1988) expanded coverage of title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601-3620) to prohibit discriminatory housing practices based on handicap and familial status. (The amended law is referred to as the Fair Housing Act or the Act). Section 804(f)(3)(C) of the Act provides that unlawful discrimination includes a failure to design and construct covered multifamily dwellings for first occupancy after March 13, 1991 (September 20, 1993), in accordance with the specific accessibility requirements set forth in section 804(f)(3)(C). The Fair Housing Act became effective on March 12, 1989. The Department implemented the Act by a final rule published on January 23, 1989 (54 FR 3232) which became effective on March 12, 1989.

Section 100.205 of the Department's Fair Housing regulations incorporates each of the Act's design and construction requirements, including the requirement that multifamily dwellings for first occupancy after March 13, 1991 be designed and constructed in accordance with the Act's accessibility requirements. This section explains which multifamily dwellings are subject to the Act's requirements by clarifying what is meant by "first occupancy". Section 100.205(a) provides that covered multifamily dwellings shall be considered to have been designed and constructed for first occupancy on or before March 13, 1991 if they are occupied by that date, or if the last building permit or building permit renewal for the covered multifamily dwelling is issued by a State, County or local government on or before January 13, 1990.

The second criterion for determining "first occupancy"—the January 13, 1990 permit deadline—was added by the Department in the final Fair Housing rule in response to objections by the building industry to the Department's proposal to rely solely on "actual occupancy" as the basis for determining first occupancy. Public comments received on the proposed Fair Housing rule argued that coverage of the design and construction requirements must be determinable at the beginning of planning and development of multifamily housing, and that housing delayed by unplanned and uncontrollable events (e.g., labor strikes, Acts of God, etc.) should not be subject to the Act's accessibility requirements. In an effort to accommodate these legitimate concerns on the part of the building industry, the Department expanded § 100.205(a) in the final rule to provide that covered multifamily dwellings would be considered to have been constructed for first occupancy after March 13, 1991 if the last building permit or building permit renewal was issued on or before January 13, 1990. The Department selected a date of fourteen months before March 13, 1991 because the median construction time for

multifamily housing projects of all sizes were determined to be fourteen months, based on data provided by the Marshall Valuation Service. The Department chose the issuance of a building permit as a basis for determining "first occupancy", because building permits are issued in writing by governmental authorities. The issuance of a building permit has the advantage of being a clear and objective standard. (In addition, any project that actually achieves first occupancy before March 13, 1991 will be judged to have met this standard, even if the last building permit or building permit renewal was issued after January 13, 1990.)

On June 15, 1990, the Department published for public comment proposed accessibility guidelines (55 FR 24370). The public comments received in response to the proposed guidelines included a number of comments requesting an extension of the January 13, 1990 permit deadline. Several commenters suggested that the January 13, 1990 permit deadline should be extended either to (1) June 15, 1990, the date the Department published proposed accessibility guidelines, or (2) August 1, 1990, the date the Department published a supplementary notice advising that efforts to comply with the proposed guidelines designated as "option one" would be considered as evidence of compliance with the Act.

Although the issue of the January 13, 1990 permit deadline related more to the content of the Fair Housing regulations than to the content of the accessibility guidelines, the Department nevertheless briefly addressed this issue in the preamble to the final Fair Housing Accessibility Guidelines, which were published on March 6, 1991 (56 FR 9472). The Department reiterated the statement made in the preamble to the final Fair Housing rule—that the date of January 13, 1990, a date fourteen months before the compliance deadline of March 13, 1991, was found to represent a median construction time for multifamily housing projects of all sizes (56 FR 9494), and, therefore, the date provided a reasonable basis for determining "first occupancy".

The Department has considered further the issue of the reasonableness of the January 13, 1990 permit deadline, as a date for distinguishing between those multifamily housing projects that are exempt from the Act's accessibility requirements and those that are not. The Department's concern is that those builders and developers who did not receive last building permits by January 13, 1990, and whose projects were subject to the Act's requirements, may have lacked adequate guidance on how to comply with the Act's accessibility requirements.

Section 804(f)(4) of the Fair Housing Act provides that compliance with the "appropriate requirements of the American National Standard for Buildings and Facilities Providing Accessibility and Usability for Physically Handicapped People (commonly cited as "ANSI A117.1")" suffices to satisfy the accessibility requirements of the Act. However, the Act provides no further guidance as to which provisions of ANSI A117.1 constitute the "appropriate requirements." In an "Advance Notice of Development of Fair Housing Accessibility Guidelines," published on August 2, 1989 (54 FR 31856), the Department solicited early comment from the public on the content of the guidelines. With respect to the content of the guidelines, the Department stated that the guidelines must be consistent with the degree of accessibility provided by the Fair Housing Act, and, at the same time, must be mindful of the costs of providing accessibility, and avoid design standards that would unnecessarily increase the costs of multifamily construction (54 FR 31857). The Department further stated that it believed that in developing its own guidelines, "departures from the design requirements of the ANSI may be feasible that will provide for accessibility at lower cost than would be incurred if following ANSI." (54 FR 31857). In the Department's Semiannual Agenda of Regulations, published on October 30, 1989 (54 FR 44702), the Department projected that it would publish final accessibility guidelines in February 1990 (54 44710). However, the Department did not provide any guidance concerning the ANSI provisions from which departures were feasible, or more detailed guidance on compliance with the Act's accessibility requirements, until it published the proposed guidelines on June 15, 1990.

Since June 15, 1990 was the first date on which the Department provided the public with detailed public technical guidance as to how compliance with each of the Act's accessibility requirements might be achieved (short of full compliance with ANSI A117.1), the Department believes that it is appropriate to extend the January 13, 1990 permit deadline to June 15, 1990. In extending the permit deadline to June 15, 1990, the Department recognizes that not only must coverage of the Act's design and construction requirements be determinable at the beginning of the planning and development of a multifamily housing project, but the manner in which compliance with the Act's accessible design and construction requirements may be achieved also must be determinable at these stages. As noted above, although the ANSI Standard was identified by the Congress as providing design standards that would achieve compliance with the Act's accessibility requirements, no further guidance was offered as to which of the ANSI provisions were going to be considered "appropriate" in meeting the Act's accessibility requirements. Additionally, the Department recognizes that, through its August 2, 1989 advance notice, and the October 30, 1989 Semiannual Agenda of Regulations, HUD led builders and developers to believe that HUD accessibility guidelines (guidelines that the Department stated would be more reasonable and less costly than full compliance with the ANSI Standard) would be published early in 1990.

In view of the above, the Department believes that it is appropriate to extend the January 13, 1990 permit deadline to June 15, 1990—the date on which the Department published proposed accessibility guidelines.

Justification for Final Rulemaking

It is the Department's usual practice to publish regulation changes as proposed rulemaking for public comment before adopting the changes as final. In this instance, the Department has determined that good cause exists for making this rule effective as soon as possible after publication. The purpose of this rule is to give immediate guidance and information to the public concerning which multifamily dwellings are subject to the Fair Housing Act's design and construction requirements—requirements that affect covered multifamily dwellings for first occupancy after March 13, 1991. The Department has determined that delaying the effectiveness of this rule would be contrary to the interest of the public, including housing consumers and housing builders and developers.

Other Matters

Regulatory Impact

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries,

Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Impact on Small Entities

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule exempts builders and developers who received last building permits after January 13, 1990, but no later than by June 15, 1990, from compliance with the Act's accessibility requirements. This exemption will assist those multifamily building and development entities, large and small alike, who did not receive last building permits by January 13, 1990, from possible expensive redesign of multifamily dwellings, because they proceeded with construction and design of covered multifamily dwellings without adequate technical guidance on compliance with the Act's accessibility requirements.

Regulatory Agenda

This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 29, 1990 (55 FR 44530), under Executive Order 12291 and the Regulatory Flexibility Act.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order No. 12606, *The Family*, has determined that this rule does not have a potential significant impact on family formation, maintenance, and general well-being, and thus is not subject to review under the order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

Executive Order 12611, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12611, *Federalism*, has determined that this rule does not have a substantial, direct effect on the States or on the relationship between the Federal government and the States, or on the distribution of power or responsibilities among the various levels of government. This rule is limited to extending the Fair Housing regulations' last building permit deadline from January 13, 1990 to June 15, 1990. State and local law continue to govern the issue concerning what constitutes a "last" building permit, or renewal thereof.

(The Catalog of Federal Domestic Assistant program number and title is 14.400 Equal Opportunity in Housing.)

List of Subjects in CFR Part 100

Civil rights, Fair housing, Reporting and recordkeeping requirements, Statistics, Aged, Handicapped, Mortgages.

Accordingly, 24 CFR part 100 is amended as follows:

PART 100—DISCRIMINATORY CONDUCT UNDER THE FAIR HOUSING ACT

1. The authority citation for 24 CFR part 100 continues to read as follows:

Authority: Title VIII, Civil Rights Act of 1968 (42 U.S.C. 3600–3620); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 100.205, paragraph (a) is revised to read as follows:

§ 100.205 Design and construction requirements.

(a) Covered multifamily dwellings for first occupancy after March 13, 1991 shall be designed and constructed to have at least one building entrance on an accessible route unless it is impractical to do so because of the terrain or unusual characteristics of the site. For purposes of this section, a covered multifamily dwelling shall be deemed to be designed and constructed for first occupancy on or before March 13, 1991, if the dwelling is occupied by that date, or if the last building permit or renewal thereof for the dwelling is issued by a State, County or local government on or before June 15, 1990. The burden of establishing impracticality because of terrain or unusual site characteristics is on the person or persons who designed or constructed the housing facility.

* * * * *

Dated: March 13, 1991.

Gordon H. Mansfield,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 91–6507 Filed 3–19–91; 8:45 am]

BILLING CODE 4210–28–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

Missouri Permanent Regulatory Program; Correction

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule concerning a permanent program amendment from the State of Missouri under the Surface Mining Control and Reclamation Act of 1977, at 30 CFR 925.16 Required Program Amendments. This rule was published January 3, 1991 (56 FR 190), and incorrectly codified required program amendments.

EFFECTIVE DATE: March 20, 1991.

FOR FURTHER INFORMATION CONTACT: Jerry R. Ennis, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 934 Wyandotte Street, room 500, Kansas City, Missouri 64105; telephone; (816) 374–6405.

Dated: March 13, 1991.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

In the final rule published in the **Federal Register** issue of Thursday, January 3, 1991 (56 FR 190), the following corrections are made:

§ 925.16 [Corrected]

1. On page 196 in the second and third columns, amendatory instruction is corrected to read as follows:

"3. Section 925.16 is amended by revising paragraph (e) and (f) and by removing and reserving paragraph (1) to read:"

2. On page 196 in the third column in section 925.16(b), the paragraph designated "(b)" should read "(e)."

3. On page 196 in the third column in section 925.16(e) the paragraph designated "(e)" should read "(f)."

[FR Doc. 91-6510 Filed 3-19-91; 8:45 am]
BILLING CODE 4310-05-M

30 CFR Part 926

Montana Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of a proposed amendment submitted by the State of Montana as a modification to its permanent regulatory program (the Montana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment to the Montana program at title 26, chapter 4(26.4), subchapters 7 and 13 of the Administrative Rules of Montana (ARM), known as the Strip and Underground Mine Reclamation Rules and Regulations, consists of revisions which are intended to make the State rules consistent with the corresponding Federal regulations and improve the clarity of the Montana rules without changing their effect. The subject matter of these revisions is outlined in the Submission of Amendment section.

EFFECTIVE DATE: March 20, 1991.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Director, Office of Surface Mining Reclamation and Enforcement, Casper Field Office, Federal Building, 100 East B Street, room 2128, Casper, Wyoming 82601-1918; Telephone (307) 261-5776.

SUPPLEMENTARY INFORMATION:

I. Background on the Montana Program

On April 1, 1980, the Secretary of the Interior conditionally approved the Montana program. General background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Mountain program can be found in the April 1, 1980, **Federal Register** (45 FR 21560). Subsequent actions taken with regard to Montana's program and program amendments can be found at 30 CFR 926.15 and 926.16.

II. Submission of Amendment

In accordance with the provisions of 30 CFR 732.17(d) through (f), the Director notified Montana by letters dated July 2, 1985 and March 29, 1990 (Administrative Record Nos. MT-5-44 and MT-6-13) of changes necessary to maintain its program in form no less stringent than SMCRA and no less effective than the implementing Federal regulations. To comply with these letters and to fulfill certain State initiated requirements and improve the clarity of the Montana rules without changing their effect, the State, by letter dated June 19, 1990 (Administrative Record No. MT-6-01), submitted these proposed rules to OSM of review as a program amendment.

The rules that Montana proposes to amend are: Administrative Rules of Montana (ARM) 26.4.724, Use of Revegetation Comparison Standards; ARM 26.4.725, Periods of Responsibility; ARM 26.4.726, Vegetation Production, Cover Diversity, Density and Utility Requirements; ARM 26.4.728, Composition of Vegetation; ARM 26.4.730, Season of Use; ARM 26.4.731, Analysis for Toxicity; ARM 26.4.732, Vegetation Requirements for Previously Cropped Areas; ARM 26.4.733, Measurement Standards for Trees, Shrubs, and Half-shrubs; and ARM 26.4.1301A, Modification of Existing Permits: Issuance of Revisions and Permits.

The Director announced receipt of this proposed amendment in the July 9, 1990 **Federal Register** (55 FR 28062) and in the same notice, opened the public comment period and provided opportunity for a public hearing on its substantive adequacy (Administrative Record No. MT-6-07). The public comment period closed August 8, 1990. The public hearing schdeuled for August 3, 1990 was not held because no one requested an opportunity to testify.

A summary of the comment received and the Director's responses to them can be found in the section of this notice entitled "Public Comment."

III. Director's Findings

1. ARM 26.4.724, Use of Revegetation Comparison Standards

Montana proposes to revise ARM 26.4.724, previously entitled "Use of Reference Areas," to allow the success of revegetation to be measured by comparison with technical success standards derived from historical data. The use of historical data would be in lieu of or in combination with the use of reference areas. Use of technical standards must be approved by the State. The proposed rule provides that Montana may require that reference areas be used in conjunction with historical data technical standards to assess success of revegetation whenever historical data technical standards do not contain sufficient information to assess the sites premine condition for comparison at bond release. Historical data technical standards may be used under the conditions that: (1) Vegetative cover, production, diversity, density, and utility data must be obtained from the premine area or from an area approved by the department that exhibits comparable vegetative, management, soils, and topographc characteristics to that of the premine area; (2) data must be generated for a sufficient time period to encompass the range of climatic variations typical of the premine or other appropriate area, or data generated from revegetated areas must be compared to historical data generated only during climatic conditions comparable to those conditions existing at the time revegetated areas are sampled; and (3) historical records must be established for each native plant community or group of native communities that will be compared to specific reclaimed area plant communities.

The revised rule continues to require that a reference area be established for each native plant community type or group of similar native community types found in the area to be disturbed by mining. The State has added a requirement that each reference area or area from which historical records are derived must be mapped at a scale of 1 inch:400 feet and sampling points must be identified. The applicant must designate which reference areas or historical data records will be used for comparison to specific post-mine vegetation communities. Because, under ARM 26.4.762, grazing land and/ or wildlife habitat are the required postmining land use, proper management of the reference area, and grazing of both reference areas and revegetated areas are still required. Also, the State continues to allow operations disturbing less than 100 acres to use U.S. Department of Agriculture (USDA) or U.S. Department of Interior (USDI) technical guides as success standards against which the success of revegetation will be evaluated. Finally, the State would require that vegetation measurements must be conducted on reclaimed areas and on reference areas when appropriate for at least the last 2 years of the period of responsibility.

The counterpart Federal regulations at 30 CFR 816.116(a) and 817.116(a) require, in part, that the success of revegetation shall be judged on the extent of cover compared to the cover occurring in natural vegetation of the area. 30 CFR 816.116(a)(2) and 817.116(a)(2) require, in part, that standards for success include criteria representative of unmined lands in the area being reclaimed to evaluate

the appropriate vegetation parameters of ground cover, production, or stocking. 30 CFR 816.116(b)(1) and 817.116(b)(1) require that for areas developed for use as grazing land or pasture land, the ground cover and production of living plants shall be at least equal to that of a reference area or such other success standards approved by the regulatory authority.

As proposed, the State rules at ARM 26.4.724 contain provisions that are no less effective than counterpart Federal regulations in 30 CFR 816.116(a), (a)(2), and (b)(1) and 817.116(a), (a)(2), and (b)(1) and the Director is approving them. 30 CFR 816.116(a)(1) and 817.116(a)(1) additionally require, in part, that standards for success be selected by the regulatory authority and included in a State's approved regulatory program. Montana's use of reference areas as a standard for success has been previously approved by OSM and is included in the regulatory program. The proposed alternative use of technical success standards derived from historical data is not inconsistent with the Federal requirements because the State has set specific conditions in its program which must be met before the historical data can be used as a success standard. This ensures a consistent and repeatable approach to the use of historical data for success standards. Therefore, the Director is approving the use of technical standards derived from historical data.

As noted earlier, the Montana program continues to allow for use of USDA and USDI technical guides as success standards for operations disturbing less than 100 acres. While the use of USDA or USDI technical guides as success standards for evaluating revegetation success is acceptable, such technical guides must be included in Montana's approved regulatory program. The Director finds that the use of USDA or USDI technical guides is consistent with the Federal regulations and is approving their use with the condition that, in accordance with 30 CFR 816.116(a)(1) and 817.116(a)(1), prior to any use of technical guides for evaluating revegetation success either the USDA or USDI technical guides or the technical criteria that will be used in selecting them must be submitted to OSM for review and inclusion in the approved permanent program.

2. ARM 26.4.725, Period of Responsibility

Montana proposes to revise ARM 26.4.725 to require that the minimum period of responsibility for reestablishing vegetation begins after the last seeding, planting, fertilizing, irrigating, or other activity related to final reclamation as determined by the department unless it can be demonstrated that such work is a normal husbandry practice that can be expected to continue as part of the postmining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success. Application for phase III bond release may not be submitted prior to the end of the tenth growing season.

The counterpart Federal regulations at 30 CFR 816.116(c)(1) and 817.116(c)(1) require that the period of extended responsibility for successful revegetation begin after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding husbandry practices that are approved by the regulatory authority in accordance with paragraph (c)(4) of these sections. 30 CFR 816.116(c)(3) and 817.116(c)(3) require, in part, that in areas of 26 inches or less average annual precipitation, the period of responsibility shall continue for a period of not less than 10 full years. Finally, 30 CFR 816.116(c)(4) and 817.116(c)(4) state that the regulatory authority may approve selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, provided it obtains prior approval from OSM in accordance with 30 CFR 732.17 that the practices are normal husbandry practices, without extending the period of responsibility for revegetation success and bond liability, if such practices can be expected to continue as part of the postmining land use or if discontinuance of the practice after the liability period expires will not reduce the probability of permanent revegetation success. The Federal regulation also provides that the approved practices shall be normal husbandry practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area, including such practices as disease, pest, and vermin control; and any pruning, reseeding, and transplanting specifically necessitated by such actions.

As proposed, ARM 26.4.725 is consistent with requirements in 30 CFR 816.116(c)(1) and (c)(3) and 817.116(c)(1) and (c)(3) and the Director is approving the proposed rules on the condition that, in accordance with 30 CFR 816.116(c)(4) and 817.116(c)(4), prior to implementation of any proposed normal husbandry practice, that practice must be submitted to OSM for review and inclusion in the approved permanent program.

3. ARM 26.4.726, Vegetation Production, Cover, Diversity, Density, and Utility Requirements

Montana proposes to revise ARM 26.4.726 to include the requirements previously included under repealed rules ARM 26.4.727 and 26.4.729 and to improve the clarity of the State's revegetation requirements. There is no single Federal regulation that is a direct counterpart to the proposed State rule. However, portions of 30 CFR 816.111, 817.111, 816.16, and 817.116 are counterparts to the proposed rule. Following is a discussion of subsections 1 to 9 of the proposed rule.

(a) Proposed subsection (1) requires that standard and consistent field and laboratory methods be used to obtain vegetation production, cover, diversity, density, and utility data, and to compare revegetated area data with reference area data and/or historical record technical standards. Specific field and laboratory methods used and schedules of assessments must be detailed in the application and must be approved by the department. Sample adequacy must be demonstrated. In addition to these and other requirements described in this rule, the department shall supply guidelines regarding acceptable field and laboratory methods. There is no direct Federal counterpart to this provision. Federal regulations 30 CFR 816.116(a) and 817.116(a) contain the general requirements for use of statistically valid sampling techniques for monitoring revegetation success. As proposed, ARM 26.4.726(1) is not inconsistent with the general requirements of these Federal regulations and the Director is approving the proposed rule.

(b) ARM 26.4.726(2) is revised to require that current vegetative production must be measured by clipping and weighing each morphological class on the revegetated area and the reference areas. Vegetative cover must be documented for each species present on revegetated areas and on all other areas where a vegetation data base is required. At least 51% of the species present on the revegetated areas must be native species genotypically adapted to the area. A countable species must be contributing at least 1% of the cover for the area. There is no direct Federal counterpart to this State rule. 30 CFR 816.111(a)(2) and 817.111(a)(2) require, in part, that the vegetative cover be comprised of species native to the area, or of introduced species where desirable

and necessary to achieve the approved post mining land use. 30 CFR 816.116(a)(1) and 817.116(a)(1) require, in part, the inclusion of statistically valid sampling techniques in the approved regulatory program. 30 CFR 816.116(b)(1) and 817.116(b)(1) require, in part, the evaluation of production for areas developed for use as grazing land, but provides no detail on sampling methodology. Proposed rule ARM 26.4.726(a) provides detail on evaluating production and cover beyond that contained in the Federal regulations. The Director finds that the proposed rule is not inconsistent with the Federal requirements and is approving the rule.

(c) Proposed subsection (3) requires that the sampling techniques for measuring success must use a 90% statistical confidence interval for total production and total cover and for other parameters as required by the department using a one-sided test with a 0.1 alpha error. The following vegetation parameters for revegetated area data must be at least 90% of identically composited reference area data and/or technical standards derived historical data: (a) Total vegetative production; (b) total non-stratified vegetative cover; and (c) density of native and introduced trees, shrubs, and half-shrubs. Federal regulations 30 CFR 816.116(a)(2) and 817.116(a)(2) require, in part, that ground cover, production, and stocking shall be considered equal to the approved success standard when they are not less than 90 percent of the success standard. The sampling techniques for measuring success shall use a 90-percent statistical confidence interval (i.e. one-sided test with a 0.10 alpha error). As proposed ARM 26.4.726(3) is substantively identical to the above referenced Federal requirement. Therefore, the Director finds that the proposed rule is no less effective than the Federal requirement and is approving the proposed rule.

(d) Proposed rule ARM 26.4.726(4) requires that the diversity of the revegetated area, that is, richness and evenness, must be comparable to the reference area or historical data technical standard in terms of species and morphological class composition and the importance of those species and morphological classes within the vegetative community. 30 CFR 816.111(a)(1) and 817.111(a)(1) require, in part, that the permittee establish a diverse vegetative cover. The requirements of ARM 26.4.726(4) provide guidance to the permittee on how diversity must be demonstrated for bond release. As submitted, Montana's proposed rule provides additional detail in evaluating diversity beyond that prescribed in the Federal regulations without reducing the State programs effectiveness. The Director finds that the proposed rule is no less effective than the Federal requirement and is approving the proposed rule.

(e) Proposed subsection (5) provides that if one morphological class is composed of undesirable species for both wildlife and livestock, a lesser cover and production in that class may be accepted by the department if it is offset by a more desirable cover and production in another class. Federal regulations 30 CFR 816.111(b)(4) and 817.111(b)(4) require that the reestablished plant species be compatible with the plant and animal species of the area. Montana's proposed rule ARM 26.4.726(5) allows permittees to alter the cover and production of different morphological classes to provide more desirable species for both wildlife and livestock. This does not conflict with the requirements of the Federal regulations as it allows the permittee to ensure plant species are compatible with the animal species of the area. The Director finds that the proposed rule is not inconsistent with the Federal regulations and is approving it.

(f) Proposed subsection (6) requires that postmine vegetative cover, production, and species composition must be of equal utility compared to those of the applicable reference area and/or historical record standard. The method used for demonstrating utility must be approved by the department. Utility data must be generated in a manner and at a time approved by the department, as well as in compliance with the grazing plan, the revegetation comparison standards, and the requirements for the protection and enhancement of fish, wildlife, and related environmental values. The Federal regulations at 30 CFR 816.111(b)(1) and 817.111(b)(1) require that reestablished plant species be compatible with the approved postmining land use. As proposed, the State rule ensures the compatibility by requiring that revegetated area have the same utility as the prescribed success standard. Therefore, the Director finds proposed rule ARM 26.4.726(6) is no less effective than the Federal requirements and is approving the proposed rule.

(g) Proposed rule ARM 26.4.726(7) requires that plant species and morphological classes be distributed on reclaimed areas in a manner which is at least as "effective" for the postmine land use as the premine condition. The means of achieving species and morphological class distribution must be addressed in the revegetation plan, and success must be determined through comparison with the appropriate reference area, historical record standard, or both. There is no comparable Federal regulation to the requirements of ARM 26.4.726(7), which requires distribution of plant species on reclaimed areas similar to that of premine areas. 30 CFR 816.111(a)(1) and 817.111(a)(1) require, in part, that vegetative cover be "effective." The State requirement encourages the establishment of effective vegetative cover while providing detail beyond that provided in the Federal regulations. As proposed, the State rule is no less effective than the Federal requirement and the Director is approving the rule.

(h) Proposed subsection (8) requires that revegetated areas must meet the performance standards listed above for at least the last 2 years of the phase III bond period. Federal regulations 30 CFR 816.116(c)(3) and 817.116(c)(3) require, in part, that vegetation parameters shall equal or exceed the approved success standard for at least the last 2 consecutive years of the responsibility period. As proposed, Montana rule ARM 26.4.726(8) is substantively identical to and no less effective than the Federal requirement and the Director is approving it.

(i) Proposed subsection (9) requires that the reestablished vegetation must meet the requirements of the Noxious Weed Management Act. Federal regulations 30 CFR 816.111(b)(5) and 817.111(b)(5) require, in part, that reestablished plant species meet the requirements of applicable State and Federal seed, poisonous and noxious plant, and introduced species laws or regulations. As proposed, ARM 26.4.726(9) requires compliance with the State noxious weed law. Compliance with other applicable State and Federal seed, poisonous and noxious, and introduced species laws or regulations is required under ARM 26.4.711. When read together with ARM 26.4.711, proposed ARM 26.4.726(9) is found to be no less effective than the Federal requirement and the Director is approving the rule.

While proposed rule ARM 26.4.726 is being approved, the Director notes that the Montana program lacks the statistically valid sampling techniques required under 30 CFR 816.116(a)(1) and 817.116(a)(1). The Director, in accordance with 30 CFR 732.17(d), notified the State of this deficiency in a letter dated March 29, 1990 (Administrative Record No. MT–8–01). Montana, in a letter dated July 19, 1990,

indicated that they would be responding to the March 29, 1990, 732 letter following completion of the 1991 legislative session in late April 1991 (Administrative Record No. MT–8–02). Therefore, the Director is taking no further action at this time regarding the lack of statistically valid sampling techniques.

4. ARM 26.4.728, Composition of Vegetation

Montana proposes to revise ARM 26.4.728 to require that prior to phase III bond release the revegetated area must meet the following criteria: (1) It must be composed of at least 51% native species (based on stratified cover data) and (2) introduced species may be present in a minority (less than 50% based on stratified cover data) if it has been documented to the department's satisfaction that they have the ability to survive in the area through adverse climatic conditions, particularly drought. Introduced species must be as capable as native species of meeting the requirements of the rules for establishment of vegetation, season of use, and protection and enhancement of fish, wildlife, and related environmental values, and the revegetation requirements of the Montana Strip and Underground Mine Reclamation Act.

Federal regulations 30 CFR 816.111(a)(2) and 817.111(a)(2) require a vegetative cover comprised of species native to the area, or of introduced species where desirable and necessary to achieve the approved postmining land use and approved by the regulatory authority. The Director has determined that proposed rule ARM 26.4.728 is no less effective than the Federal regulations and is approving the proposed rule.

5. ARM 26.4.730, Season of Use

Montana proposes to amend ARM 26.4.730 to require that the revegetated area must furnish palatable forage in comparable quantity and quality during the same grazing period as the reference area or as compared to a technical standard derived from historic records. Palatability must be based on production measurements. Methods used for evaluation must be consistent with those approved for evaluation of production, cover, diversity, density, and utility.

Counterpart Federal regulations 30 CFR 816.111(b)(2) and 817.111(b)(2) require that reestablished plant species have the same seasonal characteristics of growth as the original vegetation. Montana's proposed rule requiring comparable quantity and quality during the same grazing period provides for the same seasonal characteristics of growth required by the Federal regulations. The Director therefore finds that proposed rule ARM 26.4.730 is no less effective than Federal regulations 30 CFR 816.111(b)(2) and 817.111(b)(2) and is approving the proposed rule.

6. ARM 26.4.731, Analysis of Toxicity

The State proposes to revise ARM 26.4.731 to require that where toxicity to plants or animals is suspected due to the effects of disturbance, the department may require comparative chemical analyses of the plants or animals, or both, on the revegetated area and reference area. Alternatively, the department may require or approve a comparison of chemical analyses of plants or animals, or both, from the revegetated area with suitable standards.

There is no general counterpart Federal regulation. As proposed, the Montana rule provides the State with an additional safeguard against soils and overburden which may have suspect levels of toxic elements known to accumulate in plants and animals. This further ensures that reclaimed area will be suitable for grazing and wildlife habitat. Therefore, the Director finds that proposed rule ARM 26.4.731 does not render the Montana program inconsistent with the Federal regulations and is approving the proposed rule.

7. ARM 26.4.732, Vegetation Requirements For Previously Cropped Areas

Montana proposes to revise ARM 26.4.732 to require that where the premining vegetation was cropland and it cannot be adequately determined what the precropping vegetation was, the cropping acreage must be considered to have the same potential to support the same native vegetation as other noncropped areas with the same edaphic and topographic characteristics. In consultation with the department, these edaphic and topographic characteristics must be used to ensure compliance with the rule governing the use of revegetation comparison standards.

There is no general Federal counterpart to the proposed rule. In Montana, as required under ARM 26.4.762 and approved by OSM, the postmining land use for all reclaimed areas, except prime farmlands, must be grazing land for livestock and wildlife, fish and wildlife habitat, or both, unless alternative reclamation to cropland or any other land use is approved. The proposed rule provides guidance to operators in determining what standards will be applied when evaluating revegetation success. The Director has determined that the proposed rule does not render the State program less effective than the Federal regulations and is approving proposed rule ARM 26.4.732.

8. ARM 26.4.733, Measurement Standards For Trees, Shrubs, and Half-Shrubs

As proposed, ARM 26.4.733 requires that the species composition and stocking of trees, shrubs, and half-shrubs on the revegetated area must be comparable to the composition and density on the reference areas or to technical standards derived from historic records. When comparing the stocking rates of the revegetated area with the reference areas or historical record standard, only healthy, living plants may be counted. Trees, shrubs, and half-shrubs counted for revegetation success must be at least 2 years old and at least 80% of these plants must have been in place for 60% of the applicable period of responsibility. Whenever multiple stems occur, only the tallest may be counted. Each operator shall provide documentation that: (1) The density of woody plants established in the revegetated area is comparable to the density of live woody plants of the same life form of the approved reference areas or the approved historical record standard, with 90% statistical confidence, unless stocking at a lesser rate that better achieves the approved post mining land use is approved by the department; (2) the cover of trees, shrubs, and half-shrubs on the revegetated area meets the revegetation requirements of the Montana Act; and (3) the species diversity, seasonal variety and the regenerative capacity of the vegetation of the revegetated area meet the requirements for establishment of vegetation; planting of trees; use of revegetation comparison standards; vegetation production, cover, diversity, density, and utility requirements; and requirements for protection and enhancement of fish, wildlife, and related environmental values. Permanent roads on the revegetated area do not require stocking.

Counterpart Federal regulations 30 CFR 816.116(b)(3)(ii) and 817.116(b)(3)(ii) require that trees and shrubs that will be used in determining the success of stocking and the adequacy of the planting arrangement shall have utility for the approved postmining land use. Trees and shrubs counted in determining such success shall be healthy and have been in place for not less than two growing seasons. At the time of bond release, at least 80 percent

of the trees and shrubs used to determine success shall have been in place for 60 percent of the applicable minimum period of responsibility. The Director has determined that proposed rule ARM 26.4.733 is no less effective than the counterpart Federal regulations and is approving the proposed rule.

9. ARM 26.4.1301A, Modification of Existing Permits: Issuance of Revisions and Permits

To ensure that permits reflect the changes made to the revegetation rules as discussed above, Montana proposes to revise ARM 26.4.1301A(4) to require, in pertinent part, that as of the date that a permit is revised to comply with the rules, as previously amended and as proposed in this notice, the permittee shall conduct all operations in compliance with the permit and the rules, as amended, except that any area for which the final minimum period of responsibility for establishing vegetation had commenced on or before the day before the effective date of these proposed rules is subject to either the seeding and planting and related requirements as they read on that date or the seeding or planting requirements as proposed in this amendment.

There is no direct Federal counterpart. However, under Federal regulation 30 CFR 774.11(b) the regulatory authority may, at any time, require by order reasonable revision of a permit to ensure compliance with the Act and the regulatory program. The proposed rule provides clarity for the administration of the Montana program and additional detail beyond that given in the Federal regulations without reducing the effectiveness of the Montana program. The Director finds the proposed revision to ARM 26.4.1301A(4) is no less effective than the Federal regulation and is approving the revision.

IV. Summary and Disposition of Comments

As discussed in the section of this notice entitled "Submission of Amendment", the Director solicited public comments and provided opportunity for a public hearing on the proposed amendment. No public comments were received, and since no one requested an opportunity to testify at a public hearing, no hearing was held.

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h), comments were also solicited from various Federal agencies with an actual or potential interest in the Montana program. Two agencies, Bureau of Indian Affairs, Washington, DC and U.S. Fish and Wildlife Service, offered no comment (Administrative Record Nos. MT–6–08 and MT–6–09). Three agencies, Bureau of Indian Affairs, Billings Area Office, Bureau of Land Management and Mine Safety and Health Administration, responded favorably to the proposed changes with no substantive comments to offer (Administrative Record Nos. MT–6–10, MT–6–11 and MT–6–12).

V. Director's Decision

Based on the above findings, the Director is approving the following revisions contained in the proposed amendment submitted by Montana on June 19, 1990: ARM 26.4.726, vegetation production, cover, diversity, density, and utility requirements; ARM 26.4.728, composition of vegetation; ARM 26.4.730, season of use; ARM 26.4.731, analysis for toxicity; ARM 26.4.732, vegetation requirements for previously cropped areas; ARM 26.4.733, measurement standards for trees, shrubs, and half-shrubs; and ARM 26.4.1301A, modification of existing permits: issuance of revisions and permits. The revisions to ARM 26.4.724, use of revegetation comparison standards, are approved with the condition that, in accordance with 30 CFR 816.116(a)(1) and 817.116(a)(1), prior to any use of USDA or USDI technical guides for evaluating revegetation success, either the USDA or USDI technical guides or the technical criteria that will be used in selecting them must be submitted to OSM for review and inclusion in the approved permanent program. The revisions to ARM 26.4.725, period of responsibility, are approved with the condition that, in accordance with 30 CFR 816.116(c)(4) and 817.116(c)(4), prior to implementation of any proposed normal husbandry practice, that practice must be submitted to OSM for review and inclusion in the approved permanent program. The Federal regulations at 30 CFR part 926 concerning the Montana program are being amended to implement this decision. The Director is approving the rules with the provision that they be fully promulgated in a form identical to that submitted to and reviewed by OSM and the public. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, the Federal regulations at 30 CFR 732.17(a) require that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Montana program, the Director will recognize only the statutes, regulations and other materials approved by OSM, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Montana of only such provisions.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary of the Interior has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1291(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSM is exempt from the requirement to prepare a regulatory impact analysis, and this action does not require regulatory review by OMB. The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal regulations will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 926

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 11, 1991.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below.

PART 926—MONTANA

1. The authority citation for part 926 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In section 926.15, paragraph (i) is added to read as follows:

§ 926.15 Approval of Regulatory Program Amendments

* * * * *

(i) The following revisions to the Administrative Rules of Montana (ARM), as submitted June 19, 1990, are approved effective March 20, 1991, ARM 26.4.726, vegetation production, cover, diversity, density, and utility requirements; ARM 26.4.728, composition of vegetation; ARM 26.4.730, season of use; 26.4.731, analysis for toxicity; ARM 26.4.732, vegetation requirements for previously cropped areas; ARM 26.4.733, measurement standards for trees, shrubs, and half-shrubs; and ARM 26.4.1301A, modification of existing permits: Issuance of revisions and permits. The revisions to ARM 26.4.724, use of revegetation comparison standards, are approved with the condition that, in accordance with 30 CFR 816.116(a)(1) and 817.116(a)(1), prior to any use of USDA or USDI technical guides for evaluating revegetation success, either the USDA or USDI technical guides or the technical criteria that will be used in selecting them must be submitted to OSM for review and inclusion in the approved permanent program. The revisions to ARM 26.4.725, period of responsibility, are approved with the condition that, in accordance with 30 CFR 816.116(c)(4) and 817.116(c)(4), prior to implementation of any proposed normal husbandry practice, that practice must be submitted to OSM for review and inclusion in the approved permanent program.

[FR Doc. 91–6511 Filed 3–19–91; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AE50

Veterans Education; Procedural Due Process and the Montgomery GI Bill—Active Duty

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: VA (Department of Veterans Affairs) has been reviewing regulations for the purpose of improving due process procedures. These final regulations provide that in certain instances if claimants or beneficiaries under the Montgomery GI Bill—Active Duty can show good cause why they did not comply with the time limits within which they are required to act, those time limits do not apply. These final regulations will provide increased due process to veterans affected by time limits.

EFFECTIVE DATE: April 19, 1991.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2092.

SUPPLEMENTARY INFORMATION: On pages 18642 and 18643 of the **Federal Register** dated May 3, 1990, there was published a notice of intent to amend several regulations in order to provide veterans claiming benefits under the Montgomery GI Bill—Active Duty with increased due process. Interested people were given 32 days to submit comments, suggestions or objections. VA received no comments, suggestions or objections. Nevertheless, VA is making some changes in the final regulations.

VA proposed a companion rulemaking on pages 37797 through 37801 of the **Federal Register** dated September 28, 1988. This proposal concerned due process for claimants for disability compensation and pension. Like the proposal of May 3, 1990, the September 28, 1988, publication proposed not holding claimants responsible for time limits for perfecting claims if VA did not notify the claimants of those time limits.

VA received several comments on that proposal. As a result of those comments, VA decided to amend the September 28, 1988, proposal. The amended regulation (38 CFR 3.109) ensures, to the maximum extent practicable, that notice of any time limit within which a claimant or beneficiary must act, to perfect a claim or challenge an adverse VA decision, is effectively communicated to the claimant or beneficiary. Consequently, § 3.109 now permits an extension of time limits when a claimant or beneficiary can show good cause exists for failure to meet the limits.

After further consideration, VA has determined that the reasons for amending § 3.109 also apply to amending the regulations providing due process for our education programs. Consequently, VA has amended § 21.7032 so that it parallels § 3.109. The other proposed amendments to §§ 21.7131 and 21.7139 are also changed slightly from the May 3, 1990 proposal to reflect the different wording in § 21.7032. VA is making the amended regulations final.

The Department of Veterans Affairs has determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulatory amendments will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs has certified that these amended regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulations affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

(The Catalog of Federal Domestic Assistance Number for the program affected by these regulations is 64.124.)

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: February 19, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

PART 21—[AMENDED]

38 CFR part 21, Vocational Rehabilitation and Education, is amended as follows:

1. In § 21.7032 paragraph (d) and its authority citation are revised to read as follows:

§ 21.7032 Time limits.

* * * * *

(d) *Failure to furnish form or notice of time limit.* (1) VA's failure to furnish any form or information concerning the right

to file a claim or to furnish notice of the time limit for the filing of a claim will not extend the periods allowed for these actions.

(2) Time limits within which claimants or beneficiaries are required to act to perfect a claim or challenge an adverse VA decision may be extended for good cause shown. When an extension is requested after expiration of a time limit, the action required of the claimant or beneficiary must be taken concurrently with or prior to the filing of a request for extension of the time limit, and good cause must be shown as to why the required action could not have been taken during the original time period and could not have been taken sooner than it was. Denials of time limit extensions are separately appealable issues.

(Authority: 38 U.S.C. 3001, 3013)

2. In § 21.7131, paragraphs (e)(1)(i)(B), (e)(1)(ii)(B) and (e)(1)(iii) are revised and paragraphs (e)(2)(i)(B) and (e)(2)(i)(C) and their authority citation are revised to read as follows:

§ 21.7131 Commencing dates.

* * * * *

(e) * * *

(1) * * *

(i) * * *

(B) VA receives necessary evidence within 1 year of its request, or the veteran shows that good cause exists for VA's not receiving the necessary evidence within 1 year of its request. See § 21.7032.

(ii) * * *

(B) VA receives notice of the dependent's existence if evidence is received either within 1 year of VA request, or the veteran shows that there is good cause to extend the one-year time limit to the date on which VA received notice of the dependent's existence.

(iii) The effective date will be the date VA receives all necessary evidence, if that evidence is received more than 1 year from the date VA requests it, unless the veteran is able to show that there is good cause to extend the one-year time limit to the date on which VA received notice of the dependent's existence. If the veteran shows good cause, the provisions of subdivision (ii)(B) of this subparagraph will apply.

(2) * * *

(i) * * *

(B) Date notice is received of the dependent's existence if evidence is received either within 1 year of the VA request, or the veteran shows that there is good cause to extend the one-year time limit to the date on which VA received notice of the dependent's existence.

(C) The date VA receives evidence if this date is more than 1 year after the VA request, and the veteran is not able to show that there is good cause to extend the one-year time limit to the date on which VA received notice of the dependent's existence.

(Authority: 38 U.S.C. 3010(n))

3. In § 21.7139 paragraph (b)(2) and its authority citation are revised to read as follows:

§ 21.7139 Conditions which result in reduced rates.

* * * * *

(b) * * *

(2) The veteran or servicemember submits a description of the circumstances in writing to VA either within one year from the date VA notifies the veteran or servicemember that he or she must submit the mitigating circumstances, or at a later date if the veteran or servicemember is able to show good cause why the one-year time limit should be extended to the date on which he or she submitted the description of the mitigating circumstances.

(Authority: 38 U.S.C. 1434, 1780(a); Pub. L. 98-525)

[FR Doc. 91-6508 Filed 3-19-91; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3905-9]

Approval and Promulgation of State Implementation Plans; Colorado; Revisions to Regulation No. 4, Regulation on the Sale of New Woodstoves

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rulemaking.

SUMMARY: In this action, EPA is approving revisions to Regulation No. 4 of the Colorado State Implementation Plan (SIP), "Regulation on the Sale of New Woodstoves," which were submitted by the Governor on June 29, 1990. The revisions: (1) Prohibit any person located in the Automobile Inspection and Readjustment (AIR) Program area, as such area is defined in section 42-4-307(8) C.R.S. but not including those areas above seven thousand feet elevation, from operating a wood burning stove or fireplace during a high pollution day; (2) amend two definitions and add five new definitions; (3) remove three sections (Laboratory Accreditation Procedures, Laboratory Inspection, and Accreditation Criteria); and (4) added new language and thus changed the numbering order, by prefix, within the following sections of Regulation No. 4: II, III, IV, V, VI, VII, VIII, IX. The intended effect of this action is to make the revisions a part of the Colorado SIP.

DATES: This action will be effective on May 20, 1991, unless notice is received by April 19, 1991, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the State submittal are available for public inspection between 8 a.m. and 4 p.m., Monday through Friday, at the following locations:

Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, suite 500, Denver, Colorado 80202-2405.

Environmental Protection Agency, Public Information Reference Unit, Waterside Mall, 401 M Street SW., Washington, DC 20406.

Colorado Department of Health, Air Pollution Control Division, Ptarmigan Place, North Cherry Creek Drive and Colorado Boulevard, Denver, Colorado 80209.

FOR FURTHER INFORMATION CONTACT: C. Mark Aguilar, Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202-2405, (303) 293-1767, (FTS) 330-1767.

SUPPLEMENTARY INFORMATION:

Background:

A. July 18, 1985 Submittal

On July 18, 1985, the Governor of Colorado submitted to EPA new Regulation No. 4, "Regulation on the Sale of New Woodstoves," as a revision to the Colorado SIP. This new Regulation requires all new woodstoves sold, offered for sale, or advertised for sale after January 1, 1987, to be certified to meet emission standards for particulates and carbon monoxide (CO), with more stringent emissions standards taking effect on July 1, 1988. On April 10, 1986 (51 FR 12321), EPA approved Regulation No. 4 as part of the Colorado SIP.

B. October 24, 1986 Submittal

On October 24, 1986, the Governor submitted to EPA a revision to Regulation No. 4 of the Colorado SIP. On

June 22, 1987 (52 FR 23446), EPA approved this revision to Regulation No. 4, which established a new fee schedule for certification of new woodstoves sold after January 1, 1987. The original fee structure did not generate sufficient fees to pay for the projected costs of the certification program, including the costs associated with enforcement of Regulation No. 4.

C. February 26, 1988 Submittal

On February 26, 1988 (53 FR 5860), EPA adopted a national woodstove certification program, "Standards of Performance for New Stationary Sources; New Residential Wood Heaters." In response, the State of Colorado submitted a SIP revision on September 10, 1988, which revised section I "Definitions" and section II "Requirements for Sale of Wood Stoves" of Regulation No. 4 so as to exempt wood-fired appliances, boilers, furnaces, and cookstoves from the certification requirements of Regulation No. 4. Such revisions, which became effective on June 30, 1988, provided for consistency between the State and federal regulations. EPA approved the September 10, 1988, submittal on March 8, 1989, at 54 FR 9780.

The June 29, 1990 Submittal

The June 29, 1990 submittal provides that the limitations on the use of woodburning stoves and fireplaces shall be applicable only in those portions of the counties of Adams, Arapahoe, Boulder, Denver, Douglas, and Jefferson which are located in the Automobile Inspection and Readjustment (AIR) Program area, as such area is defined in section 42–4–307(8) C.R.S. but not including those areas above seven thousand feet elevation.

These new provisions of Regulation No. 4, mentioned above may be enforced by the appropriate local agency. Local agencies are encouraged to develop suitable enforcement programs and enter into an agreement with the State to promote more effective enforcement of this regulation.

This regulation shall not apply within any municipality which had an ordinance mandating restricted use of wood burning stoves and fireplaces on high pollution days in effect on January 1, 1990. These municipalities are as follows: Arvada, Aurora, Boulder, Broomfield, Denver, Federal Heights, Glendale, Greenwood Village, Jefferson County (unincorporated), Lafayette, Lakewood, Littleton, Longmont, Mountain View, Sheridan, Thornton, and Westminster. All such exempt areas shall be required to submit a yearly report to the Commission no later than June 30, of each year, which provides information concerning the enforcement actions pursuant to their ordinance for the previous heating season.

Prohibitions of use will be that no person shall operate a wood burning stove or fireplace during a high pollution day. A burn-down time shall be allowed for the burn-down of existing fires prior to the initiation of enforcement action. Persons utilizing their wood burning stove or fireplace as a primary source of heat and persons operating a Phase III certified wood burning stove are exempted from these wood-burning prohibitions.

The June 29, 1990 submittal also added five definitions: Wood Burning Fireplace, Burn Down Time, Primary Source of Heat, High Pollution Day, and Phase III Certified Wood Stove. The submittal also revised definitions for Wood Burning Stove and Standard Method, and removed three sections (Laboratory Accreditation Procedures, Laboratory Inspection, and Accreditation Criteria).

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective May 20, 1991, unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective May 20, 1991.

EPA finds good cause exists for making the action taken in this notice immediately effective because the implementation plan revisions are already in effect under State Law or regulation, and EPA's approval poses no additional regulatory burden.

Final Action

EPA hereby approves the revisions to Regulation No. 4, "Regulation on the Sale of New Woodstoves," of the Colorado SIP, submitted by the Governor on June 29, 1990. The revisions: (1) Prohibit any person living in the specified areas from operating a wood burning stove or fireplace during a high pollution day; (2) amend two definitions and add five new definitions; (3) removed three sections (Laboratory Accreditation Procedures, Laboratory Inspection, and Accreditation Criteria); and (4) added new language and thus changed the numbering order, by prefix, within the following sections of Regulation No. 4: II, III, IV, V, VI, VII, VIII, and IX.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

The Agency has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment. Approval of this specific revision to the SIP does not indicate EPA approval of the SIP in its entirety.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the U.S. Court of Appeals for the appropriate circuit by May 20, 1991. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Particulate matter, Carbon monoxide, Incorporation by reference.

Note: Incorporation by reference of the State Implementation Plan for the State of Colorado was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: January 25, 1991.

Jack McGraw,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the *Code of Federal Regulations* is amended as follows:

Subpart G—Colorado

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7542.

2. Section 52.320 is amended by adding paragraph (c)(49) to read as follows:

§ 52.320 Identification of plan

* * * * *

(c) * * *

(49) A revision to Regulation No. 4 of the Colorado SIP submitted on June 29, 1990, prohibits persons from operating a wood-burning stove or fireplace during a high pollution day in specified areas.

(i) Incorporation by reference.

(A) Revisions to Regulation No. 4, "Regulation on the Sale of New Woodstoves," effective on June 30, 1990.

[FR Doc. 91–6513 Filed 3–19–91; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[FL–037; FRL–3914–1]

Approval and Promulgation of Implementation Plans; Florida: Approval of Revisions to the Prevention of Significant Deterioration (PSD) Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is today approving revisions to the Florida State Implementation Plan (SIP). These revisions were submitted to EPA by the State of Florida through the Florida Department of Environmental Regulation on July 12, 1990, in response to the requirement that states either revise their SIP to include the Federal nitrogen dioxide (NO_2) increments for PSD or request delegation from EPA. The revisions being approved today incorporate the Federal NO_2 increments into the Florida PSD regulations.

EFFECTIVE DATES: This action will be effective May 20, 1991, unless notice is received within 30 days that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Written comments should be addressed to Carol Kemker of EPA Region IV's Air Programs Branch (see EPA Region IV address below). Copies of the material submitted may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Region IV Air Programs Branch, Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia 30365.

Air Resources Management Division, Florida Department of Environmental Regulation, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Carol Kemker of the EPA Region IV Air Programs Branch at 404–347–2864 or FTS–257–2864 and at the above address.

SUPPLEMENTARY INFORMATION: On October 17, 1989, EPA published a final rule for the Prevention of Significant Deterioration (PSD) for Nitrogen Oxides. States could either submit a revision to the SIP to incorporate the new nitrogen dioxide (NO_2) increments for PSD or request delegation of authority for the revised Federal PSD Regulations. On May 30, 1990, the Florida Department of Environmental Regulation approved revisions to the Florida SIP's PSD regulations which incorporated the NO_2 increments. The Florida Department of Environmental Regulation submitted the revisions to the Florida PSD regulations to EPA on July 12, 1990, which became state effective by filing with the Florida Secretary of State on July 13, 1990. Florida requested that the revisions be adopted as part of the federally approved SIP. EPA is today approving the following revisions:

(1)—17–2.100 Definitions

(21) The definition of "Baseline Area" has been revised to add the words "minor source" before "baseline date."

(22) The definition of "Baseline Concentration" has been revised to add the words "minor source" before the term "baseline date."

(23) The section which defined "baseline date" has been deleted and sections (24) through (119) have been renumbered to (23) through (118).

(119) The definition of "Major Source Baseline Date" has been added.

(126) The definition of "Minor Source Baseline Date" has been added and definitions numbered (126) through (224) have been renumbered to (127) through (225).

(2)—17–2.310 Maximum Allowable Increases (Prevention of Significant Deterioration Increments)

The new Federal NO_2 increments have been added for Class I, Class II, and Class III areas.

(3)—17–2.450 Designation of Prevention of Significant Deterioration (PSD) Areas

The term "minor source baseline" has been added to the sections concerning TSP and sulfur dioxide and a section added regarding NO_2.

(4)—17–2.500 Prevention of Significant Deterioration

This section has been amended to include NO_2 and the distinction between major and minor source baselines.

In addition to the regulatory language, the State included as part of the SIP submittal the following minimum program elements as required by EPA:

(1) A requirement for NO_2 increment consumption analyses for all major source applications which considered minor source emissions growth since the minor source baseline;

(2) Provisions for an inventory of actual NO_2 emissions which includes minor sources; and

(3) A requirement to conduct a periodic review of the increment status for each area and submit a summary report. The initial report covers the transition period between February 8, 1988, and the effective date of the state program.

The revisions being approved meet all of the requirements for incorporating the Federal NO_2 increments in the Florida SIP.

The Agency has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

Final Action

EPA is today approving the revisions to the Florida PSD air quality regulations listed above. All of the revisions being approved are consistent with Agency policy.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action is being taken without prior proposal because the changes are noncontroversial and EPA anticipates no significant comments on them. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices

will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a comment period.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 20, 1991. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by Reference, Intergovernmental relations, Ozone, Reporting and Recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of Florida was approved by the Director of the Federal Register on July 1, 1982.

Dated: March 4, 1991.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 chapter I, title 40, Code of Federal Regulations, is amended as follows:

Subpart K—Florida

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.520 is amended by adding paragraph (c)(70) to read as follows:

§ 52.520 Identification of plan.

* * * * *

(c) * * *

(70) Revisions to chaper 17–2 of the Florida Administrative Code which were submitted on July 12, 1990.

(i) Incorporation by reference.

(A) Amendments to the following rules of F.A.C. which become effective on July 13, 1990:

17–2.100 (21), (22), (119) and (126);
17–2.310 (preamble), (1)(c), (2)(c), and (3)(c);
17–2.450 (1)(a), (2)(a), and (3); and
17–2.500 (2)(e)4.b., (3)(f)3., 4(a)3., 4(b)1. thru 3.a.
introductory paragraph, 4(b)3.b. thru d., 4(b)3.e. introductory paragraph and 4(b)3.e.(ii).

(ii) Other material.

(A) Letter of July 12, 1990, from the Florida Department of Environmental Regulation.

(B) Minimum program elements.

[FR Doc. 91–6514 Filed 3–19–91; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[A–1–FRL–3911–4]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; RACT for Erving Paper Mills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision establishes and requires reasonably available control technology (RACT) for Erving Paper Mills in Erving, Massachusetts. This revision is necessary to limit volatile organic compound (VOC) emissions from this source. The intended effect of this action is to approve a source-specific RACT determination made by Massachusetts in accordance with commitments specified in its Ozone Attainment Plan approved by EPA on November 9, 1983 (48 FR 51480). This action is being taken in accordance with section 110 of the Clean Air Act.

EFFECTIVE DATE: This action will become effective May 20, 1991, unless notice is received within 30 days that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Robert C. Judge, (617) 565–3248; FTS 835–3248.

SUPPLEMENTARY INFORMATION: On October 25, 1990, the Massachusetts Department of Environmental Protection (DEP) submitted a final plan approval issued to Erving Paper Mills as a formal state implementation plan (SIP) revision. The plan approval establishes and requires reasonably available control technology (RACT) to control volatile organic compound (VOC) emissions from Erving Paper Mills in Erving, Massachusetts. The SIP revision consists of a plan approval effective October 16, 1990.

Summary of SIP Revision

The DEP issued this plan approval pursuant to requirements found in 310 CMR 7.18(17), which EPA approved on November 9, 1983 (48 FR 51480) as part of Massachusetts' Ozone Attainment Plan. Massachusetts Regulation 310 CMR 7.18(17), "Reasonably Available Control Technology (RACT)," requires the DEP to determine and impose RACT on otherwise unregulated stationary sources of VOC with the potential to emit greater than or equal to 100 tons per year. On May 25, 1988, EPA issued a SIP call to Massachusetts notifying them that their ozone attainment plan was substantially inadequate to attain the ozone standard. Nevertheless, Massachusetts remains obligated to continue to control these otherwise unregulated sources of VOC and submit the RACT determinations as SIP revisions.

Erving Paper Mills (Erving) manufactures recycled paper. No control techniques guideline (CTG) exists for manufactures of recycled paper. Therefore, Erving is a miscellaneous VOC emitting source covered by 310 CMR 7.18(17). Massachusetts has determined that the use of certain control technology for filtering the pulp and the limited use of a certain VOC for cleaning the paper making felts, when necessary, represents RACT for Erving.

Erving Paper Mills manufactures paper (tissues and napkins) from 100 percent recycled paper stock. Erving

uses VOC for the removal of water insoluble glues and impurities from the felts and screens of its three paper making machines. The glues and impurities which are not removed by mechanical filters sometimes end up on the felts or screen of a paper making machine. The presence of these impurities on the felts or screens displaces the paper fibers which would have otherwise been extruded and causes holes in the finished paper. If this occurs, the paper made is of an unacceptable quality and the felts and/or screens must be cleaned using a VOC.

Erving has taken a number of steps to reduce the impurities deposited and amount of solvents used in cleaning by mechanically filtering the slurry made from the contaminated paper stock. These filters remove the impurities before they deposit on the felts and/or screens, and become a problem. These filtering processes are the primary method to reduce VOC use and the plan approval requires their use and maintenance in accordance with the manufacturer's specifications. Except in rare circumstances, all filtering processes must be used at all times.

Additionally, the plan approval limits the quantity and type of solvent that can be used for each cleaning, as well as the number of cleanings per month. Erving investigated mechanical cleaning of the felts, rather than using solvent, but found that mechanical cleanings rapidly destroyed the felts and thus required frequent replacement. Through the filtering processes, Erving has minimized the number of felt cleanings necessary for continued production. Further, because of a change in the solvent used for cleaning, each cleaning uses less VOC to fulfill the cleaning requirement. The plan approval imposing RACT on Erving contains provisions which will enforceably insure emission reductions at the facility.

Recordkeeping and reporting requirements are contained in the plan approval and are sufficient to determine compliance with these provisions. For a more detailed description of the requirements of the plan approval see the State submittal and the Technical Support Document which is available at the EPA Regional Office listed in the **ADDRESSES** section.

The plan approval has been written to require that RACT be imposed on Erving. Imposition of RACT will limit emissions from Erving to about 26 tons of VOC per year assuming a certain level of biodegradability. At a minimum, a 68 percent reduction in VOC usage will be achieved from 1984 usage levels. The plan approval was effective upon its issuance on October 16, 1990.

The Agency has reviewed this request for revision of the federally-approved State implementation plan for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by simultaneously publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on May 20, 1991.

Final Action

EPA is approving this plan approval submitted as a SIP revision request for Erving Paper Mills. The plan approval defines and imposes RACT on Erving Paper Mills, a manufacturer of recycled paper in Erving, Massachusetts.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225).

The Office of Management and Budget has exempted this action from the requirements of section 3 of Executive Order 12291.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 20, 1991. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the Commonwealth of Massachusetts was approved by the Director of the Federal Register on July 1, 1982.

Dated: February 22, 1991.

Paul G. Keough,

Acting Regional Administrator, Region I.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1120 is amended by adding paragraph (c)(90) to read as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

(90) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on October 25, 1990 which define and impose RACT to control volatile organic compound emissions from Erving Paper Mills in Erving, Massachusetts.

(i) Incorporation by reference.

(A) Letter from the Massachusetts Department of Environmental Protection dated October 25, 1990 submitting a revision to the Massachusetts State Implementation Plan.

(B) A conditional final plan approval issued by the Massachusetts Department of Environmental Protection to Erving Paper Mills dated and effective October 16, 1990.

3. Table 52.1167 is amended by adding in table 52.1167 the following entry at the end of the listing for "310 CMR 7.18(17)."

§ 52.1167 EPA approved Massachusetts State regulations.

* * * * *

TABLE 52.1167.—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date submitted by State	Date approved by EPA	Federal Register citation	52.1120(c)	Comments/unapproved sections
310 CMR 7.18(17)	RACT	10/16/90	3/20/91	[FR citation from published date]	90	RACT for Erving Paper Mills.

[FR Doc. 91-6515 Filed 3-19-91; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 180

[PP 0F3831 and PP 9F3806/R1106; FRL-3876-7]

RIN 2707-AB78

Pesticide Tolerances for 2-[1-(Ethoxyimino)Butyl]-5-[2-Ethylthio)Propyl] 3-Hydroxy-2-Cyclohexene-1-one

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a tolerance for the the herbicide 2-[1-(ethoxyimino)butyl]-4-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one (sethoxydim) and its metabolites containing the 2 cyclohexene-1-one moiety, calculated as the herbicide in or on the raw agricultural commodities (RACs) field corn grain at 0.1 part per million (ppm), sweet corn (kernel plus cob with husk removed [K + CWHR]) at 0.2 ppm, corn forage at 0.2 ppm, corn fodder at 0.2 ppm and strawberries at 10.0 ppm. This regulation was requested by BASF Wyandotte Corp. and establishes the maximum permissible levels for residues of the herbicide in or on these RACs.

EFFECTIVE DATE: This regulation becomes effective March 20, 1991.

ADDRESSES: Written objections, identified by the document control number, [PP 0F3831 and PP 9F3806/R1106], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Robert J. Taylor, Product Manager (PM) 25, (H7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 245, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1800.

SUPPLEMENTARY INFORMATION: EPA has issued notices in the **Federal Register** announcing that BASF Corp. 100 Cherry Hill Rd., Parsippany, NJ 07054, had submitted pesticide petitions to EPA proposing to amend 40 CFR part 180 by establishing regulations to permit combined residues of the herbicide 2-[(1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one (sethoxydim) and its metabolites containing the 2-cyclohexene-1-one moiety, calculated as the herbicide, in or on certain raw agricultural commodities.

1. *PP 0F3831.* Published in the **Federal Register** of June 29, 1990 (54 FR 26751), the notice proposed establishing a regulation to permit residues of the herbicide in or on strawberries at 10.0 ppm.

2. *PP 9F3806.* Published in the **Federal Register** of January 9, 1990 (54 FR 779), the notice proposed establishing a regulation to permit residues of the herbicide in or on the raw agricultural commodities (RACs) field corn grain at 0.1 part per million (ppm), sweet corn (K + CWHR) at 0.2 ppm, corn forage at 0.2 ppm, and corn fodder at 0.2 ppm.

There were no comments or requests for referral to an advisory committee received in response to the notices.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data listed below were considered in support of these tolerances.

1. Several acute toxicology studies placing technical-grade sethoxydim in Toxicity Category III.

2. A subchronic feeding study in dogs fed dosage levels of 0, 20, and 200 milligrams per kilogram of body weight per day (mg/kg/bwt/day) with a no-observed-effect level (NOEL) of 20 mg/kg/day based on liver effects and nonspecific anemia at 200 mg/kg/day.

3. A 1-year feeding study with dogs fed dosages (based on consumption) of 0, 8.86/9.41, and 17.5/19.9, and 110/129 mg/kg/day (males/females) with a NOEL of 8.86/9.41 mg/kg/day (males/females) based on equivocal anemia in males and females at 17.5/19.9 mg/kg/day, respectively.

4. A 2-year chronic feeding/carcinogenicity study with mice fed dosages of 0, 6, 18, 54, and 162 mg/kg/day with no carcinogenic effects observed under the conditions of the study at dose levels up to and including 162 mg/kg/day (highest dose tested [HDT]) and a systemic NOEL of 18 mg/kg/day.

5. A 2-year chronic feeding/carcinogenicity study with mice fed dosages of 0, 2, 6, and 18 mg/kg/day (HDT) with no carcinogenic effects observed under the conditions of the study at dose levels up to and including 18 mg/kg/day (HDT), and a systemic NOEL greater than or equal to 18 mg/kg/day.

6. A developmental toxicity study in rats fed dosages of 0, 40, 100, and 250 mg/kg/day, with no developmental effects occurring at 250 mg/kg/day (HDT), and a maternal NOEL of 40 mg/kg/day based on significantly decreased adrenal weights at 100 mg/kg/day.

7. A developmental toxicity study in rabbits fed dosage levels of 0, 40, 160, and 480 mg/kg/day with a maternal toxicity NOEL of 160 mg/kg/day (severe weight loss, an excess number of maternal deaths, abortions, and fetal resorptions and absorptions occurred at 480 mg/kg/day [HDT]); and a developmental NOEL of 160 mg/kg/day (decreased litter sizes, low fetal weight, and increase in fetal resorptions and absorptions occurred at 480 mg/kg/day [HDT]). Due to the extreme maternal toxicity of the chemical at the 480 mg/kg/day dose, it was difficult to determine whether the increased resorptions and absorptions were due to maternal toxicity or to fetotoxicity.

8. Mutagenic studies, including a host-mediated assay (mouse) with *S. typhimurium*, negative at 2.5 grams/kg/day of chemical, and recombinant assay

and forward mutations in *B. subtilis, E. coli*, and *S. typhimurium* (all negative at concentrations of the chemical up to 100 percent).

Based on the NOEL of 8.86 mg/kg bwt/day in the 1-year dog feeding study, and using a hundredfold uncertainty factor, the acceptable daily intake (ADI) for sethoxydim is calculated to be 0.09 mg/kg bwt/day. The theoretical maximum residue contribution (TMRC) is 0.031551 mg/kg bwt/day for existing tolerances for the overall U.S. population. The current action will increase the TMRC by 0.000410 mg/kg bwt/day (<1 percent of the ADI). These tolerances and previously established tolerances utilize a total of 35.51 percent of the ADI for the overall U.S. population. For U.S. subgroup populations, nonursing infants and children aged 1 to 6, the current action and previously established tolerances utilize, respectively, a total of 59.57 percent and 71.82 percent of the ADI, assuming that residue levels are at the established tolerances and that 100 percent of the crop is treated.

Data lacking are a repeat of a rat primary hepatocyte unscheduled DNA synthesis assay on a hydroxylated plant metabolite of the parent compound. The company has been notified of this deficiency and has agreed to repeat the study.

The pesticide is useful for the purposes for which these tolerances are sought. The nature of the residue is adequately understood, and adequate analytical methods (gas chromatography using sulfur-specific flame photometric detection) are available for enforcement purposes. The method is listed in the Pesticide Analytical Manual, Vol. II (PAM II), as Method I. There are currently no actions pending against the registration of this chemical.

Based on the information cited above, the Agency has determined that the establishment of the tolerances by amending 40 CFR part 180 will protect the public health. Therefore, the tolerances are established as set forth below. Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request for a hearing with the Hearing Clerk, at the address given above. Such objecitons should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 26, 1991.

Susan H. Wayland

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.412(a), by adding and alphabetically inserting entries for the raw agricultural commodities corn, field, grain; corn, sweet (K+CWHR); corn fodder; and corn forage and revising the entry for strawberries, to read as follows:

§ 180.412 2-(1-(Ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Corn, field, grain	0.1
Corn fodder	0.2
Corn forage	0.2
Corn, sweet (K+CWHR)	0.2
* * * * *	
Strawberries	10.0
* * * * *	

[FR Doc. 91-6219 Filed 3-19-91; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 7510]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATE: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, room 417, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR part 59 *et seq.*). Accordingly, the communities will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the

actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public comment under 5. U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance with the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance—floodplains.

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region II—Regular Program Conversions				
New Jersey: Andover, township of; Sussex County	340527	February 21, 1975, Susp.; February 4, 1983, Reg.; April 2, 1991, Susp.	April 2, 1991	April 2, 1991.
New York:				
Newport, village of, Herkimer County	360315	February 3, 1975, Emerg.; July 3, 1985, Reg.; April 2, 1991, Susp.	April 2, 1991	Do.
Walton, village of, Delaware County	360216	May 19, 1975, Emerg.; April 2, 1991, Reg.; April 2, 1991, Susp.	April 2, 1991	Do.
Woodhull, town of, Steuben County	360876	November 3, 1975, Emerg.; September 24, 1984, Reg.; April 2, 1991, Susp.	April 2, 1991	Do.
Region IV				
North Carolina:				
Bald Head Island, village of, Brunswick County	370442	February 26, 1986, Emerg.; May 15, 1986, Reg.; April 2, 1991, Susp.	April 2, 1991	Do.
Caswell Beach, town of, Brunswick County	370391	May 6, 1976, Emerg.; January 17, 1976, Reg.; April 2, 1991, Susp.	April 2, 1991	Do.
Holden Beach, town of, Brunswick County	375352	March 19, 1971, Emerg.; May 26, 1972, Reg.; April 2, 1991, Susp..	April 2, 1991	Do.
Ocean Isle Beach, town of, Brunswick County	375357	September 18, 1970, Emerg.; March 26, 1976, Reg.; April 2, 1991, Susp.	April 2, 1991	Do.
South Carolina: Horry County, unincorporated areas	450104	December 8, 1980, Emerg.; February 15, 1984, Reg.; April 2, 1991, Susp.	April 2, 1991	Do.
Tennessee:				
Brighton, town of, Tipton County	470188	September 15, 1975, Emerg.; June 17, 1986, Reg.; April 2, 1991, Susp.	April 2, 1991	Do.
Covington, city of, Tipton County	470189	January 15, 1975, Emerg.; March 18, 1987, Reg.; April 2, 1991, Susp.	April 2, 1991	Do.
Hardin County, unincorporated areas	470082	April 16, 1976, Emerg.; September 1, 1986, Reg.; April 2, 1991, Susp.	April 2, 1991	Do.
McNairy County, unincorporated areas	470127	June 16, 1986, Emerg.; July 1, 1988, Reg.; April 2, 1991, Susp.	April 2, 1991	Do.
Tipton County, unincorporated areas	470340	July 3, 1975, Emerg.; April 2, 1991, Reg.; April 2, 1991, Susp.	April 2, 1991	Do.
Region V				
Ohio:				
Richland County, unincorporated areas	390476	December 11, 1984, Emerg.; January 15, 1988, Reg.; April 2, 1991, Susp.	April 2, 1991	Do.
Ross County, unincorporated areas	390480	April 2, 1976, Emerg.; April 2, 1991, Reg.; April 2, 1991, Susp.	April 2, 1991	Do.
Wisconsin:				
Kohler, village of, Sheboygan County	550462	May 13, 1975, Emerg.; April 2, 1991, Reg.; April 2, 1991, Susp.	April 2, 1991	Do.
Sheboygan Falls, city of, Sheboygan County	550431	June 10, 1975, Emerg.; April 2, 1991, Reg.; April 2, 1991, Susp.	April 2, 1991	Do.
Sheboygan, city of, Sheboygan County	550430	April 23, 1971, Emerg.; May 15, 1977, Reg.; April 2, 1991, Susp.	April 2, 1991	Do.
Region VI				
Texas:				
Allen, city of, Collin County	480131	July 15, 1975, Emerg.; June 1, 1978, Reg.; April 2, 1991, Susp.	April 2, 1991	Do.
Brewster County, unincorporated areas	480084	October 5, 1976, Emerg.; October 15, 1985, Reg.; April 2, 1991, Susp.	April 2, 1991	Do.
Lucas, city of, Collin County	481545	July 3, 1979, Emerg.; July 3, 1979, Reg.; April 2, 1991, Susp.	April 2, 1991	Do.
Plano, city of, Collin County	480140	July 19, 1974, Emerg.; January 2, 1980, Reg.; April 2, 1991, Susp.	April 2, 1991	Do.
Region I				
Connecticut: Seymour, town of, New Haven County	090088	December 18, 1974, Emerg.; July 3, 1978, Reg.; April 16, 1991, Susp.	April 16, 1991	April 16, 1991.

Region III				
Pennsylvania:				
Brookville, borough of, Jefferson County	420510	June 18, 1974, Emerg.; April 16, 1991, Reg.; April 16, 1991, Susp.	April 16, 1991	Do.
Bullskin, township of, Fayette County	421622	March 23, 1976, Emerg.; April 16, 1991, Reg.; April 16, 1991, Susp.	April 16, 1991	Do.
Georges, township of, Fayette County	421626	May 20, 1975, Emerg.; April 16, 1991, Reg.; April 16, 1991, Susp.	April 16, 1991	Do.
German, township of, Fayette County	421627	March 1, 1977, Emerg.; April 16, 1991, Reg.; April 16, 1991, Susp.	April 16, 1991	Do.
Menallen, township of, Fayette County	421632	July 18, 1974, Emerg.; April 16, 1991, Reg.; April 16, 1991, Susp.	April 16, 1991	Do.
North Union, township of, Fayette County	421633	September 3, 1975, Emerg.; April 16, 1991, Reg.; April 16, 1991, Susp.	April 16, 1991	Do.
South Union, township of, Fayette County	421637	July 19, 1974, Emerg.; April 16, 1991, Reg.; April 16, 1991, Susp.	April 16, 1991	Do.
Springfield, township of, Fayette County	421638	January 14, 1976, Emerg.; April 16, 1991, Reg.; April 16, 1991, Susp.	April 16, 1991	Do.
West Virginia:				
Danville, town of, Boone County	540230	April 25, 1975, Emerg.; April 16, 1991, Reg.; April 16, 1991, Susp.	April 16, 1991	Do.
Boone County, unincorporated areas	540007	April 25, 1975, Emerg.; April 16, 1991, Reg.; April 16, 1991, Susp.	April 16, 1991	Do.
Glenville, city of, Gilmer County	540036	March 6, 1975, Emerg.; April 16, 1991, Reg.; April 16, 1991, Susp.	April 16, 1991	Do.
Madison, city of, Boone County	540008	June 9, 1975, Emerg.; April 16, 1991, Reg.; April 16, 1991, Susp.	April 16, 1991	Do.
Sand Fork, town of, Gilmer County	540037	September 3, 1975, Emerg.; April 16, 1991, Reg.; April 16, 1991, Susp.	April 16, 1991	Do.
Sophia, town of, Raleigh County	540174	May 27, 1975, Emerg.; April 16, 1991, Reg.; April 16, 1991, Susp.	April 16, 1991	Do.
Sylvester, town of, Boone County	540238	July 8, 1975, Emerg.; April 16, 1991, Reg.; April 16, 1991, Susp.	April 16, 1991	Do.
Whitesville, town of, Boone County	540229	June 12, 1975, Emerg.; April 16, 1991, Reg.; April 16, 1991, Susp.	April 16, 1991	Do.
Region V				
Illinois: Wilmington, city of, Will County	170715	August 7, 1974, Emerg.; April 16, 1991, Reg.; April 16, 1991, Susp.	April 16, 1991	Do.
Region VI				
Arkansas: Jefferson County, unincorporated areas	050440	September 6, 1978, Emerg.; April 16, 1991, Reg.; April 16, 1991, Susp.	April 16, 1991	Do.
Minimal Conversion				
Region V				
Michigan: Isabella, township of, Isabella County	260820	April 24, 1989, Emerg.; April 16, 1991, Reg.; April 16, 1991, Susp.	April 16, 1991	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Issued: March 13, 1991.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 91-6602 Filed 3-19-91; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[GEN Docket No. 89-623; FCC 91-43]

Test procedure for Class A, B and S Emergency Position Indicating Radiobeacons (EPIRBs)

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends part 2 of the rules to add a test procedure for Class A, B and S emergency position indicating radiobeacons (EPIRBs) operating under part 80 of the rules. The new test procedure provides a step-by-step method of determining compliance with the technical standards in part 80 and replaces the procedures in Bulletin OET-45, "Measurement Procedures for Peak Effective Radiated Power (PERP) of Emergency Position Indicating Radio Beacons (EPIRB) Transmitters" and Radio Technical Commission for Aeronautics (RTCA) Document DO-183, "Minimum Operational Performance Standards for Emergency Locator Transmitters". It also includes instructions for determining compliance with the new spectral enhancement requirements.

EFFECTIVE DATE: April 25, 1991.

FOR FURTHER INFORMATION CONTACT: Thomas W. Phillips, FCC Laboratory, 7435 Oakland Mills Road, Columbia, MD 21046, (301) 725-1585.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in General Docket No. 89-623, adopted February 5, 1991, and released March 14, 1991. The text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center (202) 452-1422, 1114 21st Street NW., Washington, DC 20036.

Summary of the Report and Order

1. By this action, the Commission amends part 2 of its Rules to add a new procedure for testing Class A, B and S Emergency Position Indicating Radiobeacons (EPIRBs) operating under part 80 of the Commission's Rules. An EPIRB is a small, battery powered transmitter carried on maritime vessels to provide radiolocation signals in the event of an emergency. The new procedure provides a step-by-step method for testing these devices for compliance with the technical, operational and environmental requirements of part 80 and replaces the procedures in Bulletin OET-45, "Measurement Procedures for Peak Effective Radiated Power (PERP) of Emergency Position Indicating Radio Beacons (EPIRB) Transmitters" and Radio Technical Commission for Aeronautics (RTCA) Document DO-183, "Minimum Operational Standards for Emergency Locator Transmitters."

2. In 1988 the Commission, in conjunction with the U.S. Coast Guard, conducted an investigation of the Class A, B and S EPIRBs which revealed a high rate of non-compliance with electrical, mechanical and environmental requirements. Also in 1988, new FCC technical standards on spectral characteristics intended to improve the probability of detection by satellites became effective. The Commission determined that in order to improve compliance and to provide a test procedure for determining compliance with the new spectral standards, a new comprehensive test procedure was necessary. Accordingly, the Commission adopted a notice of proposed rule making (NPRM) in GEN Docket No. 89-623, 55 FR 2392, January 24, 1990 proposing to amend the rules by adding a new test procedure for EPIRBs.

3. Three parties filed comments in the proceeding. All supported the new test procedure, but suggested some modifications, most of which were accepted and incorporated in the final adopted test procedure.

4. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, the proposed rules will not, if promulgated, have a significant economic impact on a substantial number of small entities because they provide guidance and procedures consistent with the needs of the industry.

5. Hence, it is ordered that, pursuant to the authority contained in sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, part 2 of chapter I of title 47 of the Code of Federal Regulations *is amended* as set forth below. *It is further ordered* that this proceeding is *terminated.*

List of Subjects in 47 CFR Part 2

EPIRB measurement procedure, Radio.

Federal Communications Commission.

Donna Searcy,

Secretary.

Rule Changes

Part 2 of chapter I, title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 2 continues to read as follows:

Authority: Sec. 4, 302, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. sections 154, 302, 303, and 307 unless otherwise noted.

2. Section 2.995 is amended by revising paragraph (a)(2) to read as follows:

§ 2.995 Measurements required: Frequency stability.

(a) * * *

(2) From −20° to +50° centrigrade for equipment to be licensed for use in the Maritime Services under part 80 of this chapter, except for Class A, B, and S Emergency Position Indicating Radiobeacons (EPIRBS), and equipment to be licensed for use above 952 MHz at operational fixed stations in all services, stations in the Local Television Transmission Service and Point-to-Point Microwave Radio Service under part 21 of this chapter, and equipment licensed for use aboard aircraft in the Aviation Services under part 87 of this chapter.

* * * * *

3. A new subpart N is added to read as follows:

Subpart N—FCC Procedure for Testing Class A, B and S Emergency Position Indicating Radiobeacons (EPIRBS)

General

Sec.

2.1501 Introduction.
2.1503 Test environment.
2.1505 Test instrumentation and equipment.

Environmental and Operational Test Procedures

2.1507 Test frequencies.
2.1509 Environmental and Duration Tests.
2.1511 Measurements of Radiated Emissions.
2.1513 Measurements of Modulation Characteristics.
2.1515 Spectral Measurements.

Data Recording/Reporting Requirements

2.1517 Data Recording/Reporting Requirements.

Figures

Figure 1—Measurement Site.
Figure 2—Typical Audio Waveform.
Figure 3—Example of ideal EPIRB Spectrum.
Figure 4—Example of EPIRB Carrier Component.

Subpart N—FCC Procedure for Testing Class A, B and S Emergency Position Indicating Radiobeacons (EPIRBS)

General

§ 2.1501 Introduction.

The procedure described herein sets forth uniform methods for testing Class A, B and S Emergency Position Indicating Radiobeacons (EPIRBs) for compliance with the applicable portions of the FCC Rules and Regulations. Other methods and test results may be used provided they are fully documented and deemed by the Commission to yield results equivalent to the procedures set forth in this section.

§ 2.1503 Test environment.

(a) *Measurement sites.* Radiated emission tests for peak effective radiated power (PERP), spurious emissions and power in the test mode are to be performed on an open field test site as shown in Figure 1. The site is to be located on level ground with an obstruction-free, 60 m by 52 m, elliptical area. The site is to be equipped with an antenna mast capable of adjustment from 1 to 4 m. The center of a metal ground plane at least one wavelength in diameter at 121.5 MHz (2.47 m) is to be located 30 m from the receiving antenna. The ground plane is to have provisions for mounting removable quarter-wave verticle elements to produce a monopole antenna at both 121.5 and 243 MHz with the VSWR of less than 1.5.

Note: It is desirable that the level of radiated ambient EME at the test site be at least 6 dB below the FCC limits applicable to the EPIRB. It is, of course, not always possible to meet this condition. If the ambient field strength at some frequencies within the specified measurement ranges is too high, it is recommended that one or more of the following corrective steps be employed:

(1) Perform measurements in critical frequency bands during hours when broadcast and other radio stations are off-the-air and ambients from industrial equipment are lower.

(2) Insofar as is possible, orient the axis of an open area test site to discriminate against strong ambient signals.

(3) Vary the bandwidth of the measuring instrument to separate ambient EME from emissions from the EPIRB.

(b) *Temperature.* Except as otherwise noted, the ambient temperature during testing is to be within the range of 4 to 35 °C (40 to 95 °F).

§ 2.1505 Test instrumentation and equipment.

(a) *Receiver (field intensity meter).* A calibrated field intensity meter (FIM) with a frequency range of 30 to 1000 MHz is required for measuring radiated emission levels. This instrument should be capable of making peak measurements with a bandwidth of 100 kHz.

(b) *Spectrum analyzer.* Spectral measurements are to be made with a spectrum analyzer with a minimum resolution bandwidth no greater than 10 Hz. The video filter, if used, should have a bandwidth wide enough so as to not affect peak readings. A linear video output is desirable for performing measurements of modulation characteristics.

(c) *Storage oscilloscope.* Measurements of modulation characteristics are to be made using a calibrated storage oscilloscope. This instrument is to be DC coupled and capable of manually triggered single sweeps.

(d) *Frequency counter.* A frequency counter with an accuracy of at least 5 parts per million is required for measuring the carrier frequency.

(e) *Signal generator.* A calibrated signal generator with an output of at least 75 mW at 121.5 and 243 MHz is required for generating a reference signal for site calibration.

(f) *Antenna.* Radiated emissions are to be measured with calibrated, tuned, half-wave dipole antennas covering the frequency range of 30 to 1000 MHz.

(g) *Temperature chamber.* Tests which call for subjecting the EPIRB to temperature levels other than the ambient temperature are to be performed in a temperature test chamber which can be adjusted to stable temperatures from −20 to +55 °C. This chamber is to be of sufficient size to accommodate the EPIRB under test.

(h) *Vibration table.* A vibration table capable of vibrating the EPIRB with a sinusoidal motion is required. The table must be capable of varying the frequency of vibration either linearly or logarithmically over a range of 4 to 33 Hz with maximum peak amplitudes of up to 2.5 mm.

(i) *Salt fog chamber.* A chamber capable of producing salt fog at a temperature of 35 °C for 48 hours is required. This chamber is to be of sufficient size to accommodate the EPIRB under test.

(j) *Drop test facility.* A facility which will permit dropping an EPIRB from a height of 20 m into water is required. The water must be deep enough so that the EPIRB will not touch bottom when dropped.

§ 2.1507 Test frequencies.

Testing of an EPIRB for compliance outside a shielded room on a distress frequency is prohibited, since this may interfere with emergency communications. Therefore, all compliance testing outside a shielded room should be conducted on one of the pairs of alternate frequencies specified below:

121.600/243.200 MHz
121.650/243.300 MHz
121.700/243.400 MHz
121.750/243.500 MHz
121.800/243.600 MHz
121.850/243.700 MHz
121.900/243.800 MHz

The above frequencies are to be used for limited testing of EPIRBs for compliance with FCC Rules, subject to the following conditions:

(a) The testing shall not cause harmful interference to authorized communications on these frequencies.

(b) The testing shall be coordinated with the nearest FCC district office.

For simplicity, 121.5 MHz and 243 MHz will be used throughout this test procedure to indicate the alternate test frequency.

§ 2.1509 Environmental and duration tests.

The environmental and operational tests in §§ 2.1509 (a) through (e) are to be conducted on a single test unit in the order given below. This sequence of tests also includes the electrical tests in §§ 2.1511, 2.1513 and 2.1515 of this part. The test unit is not to be adjusted, nor is the battery to be replaced during these tests, and a log of battery on-time should be maintained. The above tests are to be performed on the same test unit. The tests in §§ 2.1509 (f) through (i) may be run in any sequence or may be performed on separate test units.

(a) *Vibration test.*

Step (1) Secure the EPIRB to the vibration table. The EPIRB is not to be operated and should not activate while being vibrated.

Step (2) Subject the EPIRB to sinusoidal motion parallel to one of the three major orthogonal axes under the following conditions:

A. Frequency (Hz)	Peak amplitude (mm)
4–10	2.5
10–15	0.8
15–25	0.4
25–33	0.2

B. The frequency is to be changed either linearly or logarithmically with time between 4 Hz and 33 Hz such that a complete cycle (4 Hz to 33 Hz to 4 Hz) takes approximately 5 minutes.

C. The EPIRB is to be vibrated for at least 30 minutes or six complete cycles.

Step (3) Remount the EPIRB, if necessary, and repeat step 2 for each of the other two major orthogonal axes.

Step (4) Upon completion of the test, perform an exterior mechanical inspection and verify operation by turning the unit on and observing the RF power indicator on the unit or monitoring the transmission with a receiver. Record test results.

(b) *Thermal shock tests.* These tests are to be performed on EPIRBs which are required or intended to float.

(1) *Low temperature thermal shock test.*

Step (1) Place the EPIRB in a temperature chamber for at least 3 hours at −20 °C or colder. The EPIRB is not to be operated while being cooled.

Step (2) Immediately place the EPIRB in water that has been maintained at +10 °C or warmer.

Step (3) After 15 minutes, perform as exterior mechanical inspection and verify operation by turning the unit on and observing the RF power indicator on the unit or monitoring the transmission with a receiver. Record test results.

(2) *High temperature thermal shock test.*

Step (1) Place the EPIRB in a temperature chamber for at least 3 hours at +55 degrees C or warmer. The EPIRB is not to be operated while being heated.

Step (2) Immediately float the EPIRB in water that is maintained at +25 degrees C or colder.

Step (3) After 15 minutes, perform an exterior mechanical inspection and verify operation by turning the unit on and observing the RF power indicator on the unit or monitoring the transmission with a receiver. Record test results.

(c) *Salt fog test.*

Step (1) Place the EPIRB in a salt fog chamber for a period of at least 2 hours at a temperature of 35 °C (±2 °C) before exposing it to salt fog. The EPIRB is to be turned off during this test.

Step (2) With the chamber temperature maintained at 35 °C, introduce salt fog at the saturation point for 48 hours. The salt fog is to be prepared from a 5% (±1%) salt (sodium chloride solution. For detailed guidance on the preparation of the solution and the apparatus for generating salt fog, refer to MIL-STD-810D (19 July 1983), method 509.2.

Step (3) Upon completion of the salt fog exposure, the EPIRB is to be airdried at room temperature for 12 hours and operation verified by turning the unit on and observing the RF power indicator on the unit or monitoring the transmission with a receiver. Record observations.

(d) *Drop test.* This test is to be performed on EPIRB which are required or intended to float.

Step (1) Turn the EPIRB on, log the time and drop it three times into water from a height of 20 meters. The water is to be deep enough so that the EPIRB does not touch bottom when dropped. Each drop should be initiated from a different orientation as follows: antenna vertical up; antenna vertical down; antenna horizontal.

Step (2) Upon completion of the drop test, an exterior mechanical inspection is to be performed and operation verified by observing the RF power indicator on the unit or monitoring the transmission with a receiver. Record observations. Turn the test unit off and log the total on-time.

(e) *Forty-eight hour operational test.* This test includes the battery life test and all the electrical tests given in §§ 2.1511, 2.1513 and 2.1515 of this part, at various temperatures. The tests are to be performed on the same EPIRB in the sequence specified herein. Be sure to record the on-time of the unit during each test. No more than 8 hours of total on-time is permitted before commencing step 4. When operating the EPIRB in the environmental chamber, a non-radiating load may be substituted for the antenna provided it is electrically equivalent to the standard antenna and does not reduce the battery current drain.

Step (1) Perform the radiated emissions test in § 2.1511 of this part.

Step (2) Perform the modulation characteristic tests in § 2.1513 of this part.

Step (3) Perform the spectral tests in § 2.1515 of this part.

Step (4) With the EPIRB off, place unit in an environmental chamber at a temperature of −20 °C for at least 2 hours.

Step (5) With the EPIRB in the chamber, repeat the carrier frequency test in § 2.1515(d) of this part. (Leave the EPIRB turned on.)

Step (6) Near the end of 48 hours of total on-time for the EPIRB, repeat the carrier frequency test in § 2.1515(d) of this part.

Step (7) At the end of 48 hours of total on-time, remove EPIRB from the chamber and immediately repeat the PERP test for the fundamental emissions in § 2.1511(c) of this part. The unit should be maintained at −20 °C to the extent possible for this test.

(f) *Float free and activation test.* This test is required only for Class A EPIRBs.

Step (1) The EPIRB is to be installed in the automatic release mechanism and the assembly is to be mounted on a fixture simulating a deck or bulkhead as per manufacturer' installation instructions.

Step (2) Submerge the fixture in water in its normal mounted orientation. The EPIRB must float free before reaching a depth of 4 meters and should automatically activate. Activation is to be verified by observing the RF power indicator on the unit or monitoring the transmission with a receiver.

If the EPIRB is equipped with an automatically deployable antenna, the antenna must properly deploy during each immersion. Record observations.

(g) *Stability and buoyancy test.* This test is to be performed on EPIRBs which are required or intended to float. This test is to be conducted in fresh water.

Step (1) With the antenna deployed in its normal operating position, submerge the EPIRB in a horizontal position just below the surface of the water.

Step (2) Release the EPIRB and observe the amount of time required for it to come to an upright position. It must reach its upright position within one second from each position.

The EPIRB must have a reserve buoyancy of at least 5% of its gross weight. It must also float upright in calm water with the base of the antenna a minimum of 5 cm above the water. Record the time required for the test unit to right itself.

(h) *Temperature/frequency test.* The frequency stability shall be measured over an ambient temperature from −20° to +55 °C at intervals of not more than 10 °C. A period of time sufficient to stabilize all of the components of the oscillator circuit at each temperture level shall be allowed prior to frequency measurement.

Step (1) Place the EPIRB in the environmental test chamber.

Step (2) Adjust the temperature in the chamber to +20 °C and allow sufficient time for the oscillator to stabilize at that temperature.

Step (3) Measure the carrier frequency in accordance with the procedure in § 2.1515(d) of this part. Record the carrier frequency in Hertz. The carrier frequency at +20 °C is the reference for determining the frequency tolerance.

Step (4) Increase the temperature in the chamber to +55 °C and allow sufficient time for the oscillator to stabilize at that temperature. Measure the carrier frequency using the procedure in § 2.1515(d) of this part.

Step (5) Reduce the temperature in the chamber in 10 °C maximum increments until -20 °C is reached. At each new temperature, allow sufficient time for the oscillator to stabilize at that temperature. Measure the temperature and frequency in each case and plot the frequency vs temperature from -20° to +55 °C.

(i) *Leakage and immersion test.*

Step (1) Completely submerge the EPIRB in water for 48 hours. The EPIRB is to be turned off during this test.

Step (2) Remove the EPIRB from the water and wipe dry.

Step (3) Verify operation by briefly turning the EPIRB on and observing the RF power indicator on the unit or monitoring the transmission with a receiver.

Step (4) Open the EPIRB for examination. There is to be no water inside the unit. Record observations.

§ 2.1511 Measurements of radiated emissions.

The Commission's Rules require that the peak effictive radiated power (PERP) of a Class A, B or S EPIRB not be less than 75 mW under certain specified conditions. The PERP of an EPIRB transmitter is determined by comparing its level to a reference PERP generated by a standard quarter-wave monopole antenna located on a one wavelength

minimum diameter metal ground plane. The Rules also require that all spurious and harmonic emissions be attenuated by a specified amount with respect to the reference PERP. In addition, there is a limit on the PERP of radiated emissions with the switch in the test mode. These measurements are to be made in accordance with the following procedure.

(a) *General set-up instructions.*

Measurements of radiated electromagnetic emissions (EME) are to be performed on the 30 meter open field test site described in § 2.1503(a) of this part and on one of the pair of frequencies listed in § 2.1507 of this part. A receiver, tuned dipole antennas and a calibrated signal generator as described in § 2.1505 of this part are required. The EPIRB should be powered by its own internal battery with its standard antenna attached and deployed.

(b) *Set-up for radiated EME tests.*

Step (1) Place a 121.5 MHz quarter-wave vertical antenna element at the center of the ground plane and connect the output of the calibrated signal generator to the antenna.

Step (2) Mount the tuned dipole antenna on the antenna mast, tune the elements to 121.5 MHz and connect the antenna to the receiver.

Step (3) After an appropriate warm up, turn the receiver to the frequency of the test unit, set the detector to peak mode and the bandwidth to 100 kHz.

(Note: It is sometimes helpful to monitor the receiver audio output with a speaker. The EPIRB signal may be identified by its distinctive modulation.)

(c) *Radiated EME tests.*

Fundamental emissions-peak effective radiated power

Step (1) Turn on the signal generator and adjust the output to 75 mW at 121.5 MHz.

Step (2) Vary the antenna height from one to four meters in both vertical and horizontal polarization. Record the highest receiver reading in dBm as the reference level.

Step (3) Disconnect the signal generator and replace the quarter-wave vertical element on the ground plane with the EPIRB under test. The EPIRB is to be positioned directly on the surface of and in the center of the metal ground plane.

Step (4) Activate the EPIRB.

Step (5) Vary the receive antenna height from one to four meters in both vertical and horizontal polarization. Record the highest receiver reading in dBm and the instrument settings, antenna height and direction for maximum radiation, antenna polarization and conversion factors, if any, associated with that reading.

Step (6) Repeat Step 5 with the EPIRB switch in the test position. Return the switch to the normal operation position.

Step (7) Rotate the EPIRB 30 degrees and repeat Steps 5 and 6. Repeat this step for all successive 30 degrees segments of a full, 360 degree rotation of the EPIRB.

Step (8) Repeat § 2.1511(b) and Steps 1 through 7 for 243 MHz.

Step (9) Compute the peak effective radiated power for the maximum level of each measured emission using the following formula:

$$PERP = \frac{75 \times}{\log_{10}^{-1}} \left[\frac{dBm_{meas} - dBm_{ref}}{10} \right]$$

where:

dBm_{meas} is the measured receiver reading in dBm, and

dBm_{ref} is the reference receiver reading found in step 2 of § 2.1511(c).

Step (10) Record the PERP in mW. The FCC limit for minimum power in the normal operation mode (i.e., with the EPIRB switch in the normal operating position) is 75 mW. The FCC limit for maximum power in the test mode is 0.0001 mW.

Spurious emissions

Step (11) Reset the signal generator to operate at 121.5 MHz.

Step (12) For each spurious and harmonic emission to be measured, retune the receive antenna to the appropriate frequency and repeat Steps 5 and 7.

Step (13) Determine the FCC limit on power for spurious emissions on the frequency of each measured emission as follows:

The rules require that spurious emissions be attenuated at least 30 decibels below the transmit power level. Therefore, the maximum received power limit for a spurious emission can be calculated from the formula:

$$dBm_{spur} = dBm_{meas} + AF_{121.5} - AF_{spur\ freq} - 30$$

where:

dBm_{meas} = measured receiver reading (Section 2.1511(c), step 5).

$AF_{121.5}$ = tuned dipole antenna factor at 121.5 MHz.

$AF_{spur\ freq}$ = tuned dipole antenna factor at spurious freq.

Step (14) Record in dB below the fundamental emissions the level of all spurious and harmonic emissions within 10 dB of the FCC limits.

§ 2.1513 Measurements of modulation characteristics.

(a) *Set-up.* Test of modulation characteristics are to be performed in an RF shielded room.

Step (1) Place the EPIRB directly on a metal ground plane, such as the shielded room floor.

Step (2) Place a suitable receiving antenna at a convenient distance from the EPIRB and connect it to the input of the spectrum analyzer or receiver to observe the radiated signal from the EPIRB.

Step (3) Set the spectrum analyzer or receiver controls as follows:
I.F. bandwidth: 300 kHz minimum
Video filter: OFF or as wide as possible
Amplitude scale: Linear
Frequency: 121.5 MHz
Scan width: 0 Hz

Step (4) Connect the detected output of the spectrum analyzer or receiver to the input of the storage oscilloscope.

Step (5) Set the oscilloscope controls as necessary to allow the demodulated waveform to be viewed. The input signal is to be DC coupled.

(b) *Measurement of Audio Frequencies.*

Step (1) Activate the EPIRB.

Step (2) Trigger the oscilloscope and store at least one complete cycle of the audio waveform.

Step (3) Measure the period (T) of the waveform. The period is the time difference between the half voltage points at the beginning and end of one complete cycle of the waveform. See Figure 2.

Step (4) Calculate the frequency (F), where: $F = 1/T$.

Step (5) Repeat Steps 2 through 4 until the highest and lowest audio frequencies are found.

(Note: The lowest and highest frequencies may occur several cycles before or after the transition from low to high frequency.)

Step (6) Determine the audio frequency range (F_{range}), where:

$$F_{range} = F_{high} - F_{low}$$

Step (7) Record instrument settings and the lowest and highest audio frequencies. Record the audio frequency range in Hertz.

Step (8) Repeat Steps 1–7, above, for 243 MHz.

(c) *Modulation factor.*

Step (1) Activate the EPIRB.

Step (2) Trigger the oscilloscope and store at least one complete cycle of the audio waveform. The input signal is to be DC coupled or erroneous results will be obtained.

Step (3) Measure the maximum voltage (V_{max}), and the minimum voltage (V_{min}) for the cycle. The modulation factor (M) is calculated from the following formula:

$$M = \frac{V_{max} - V_{min}}{V_{max} + V_{min}}$$

See Figure 2.

Step (4) Repeat Steps 2 and 3 until the lowest modulation factor is found.

Step (5) Record instrument settings and the lowest modulation factor, expressed as a ratio between 0 and 1.

Step (6) Repeat the above measurements for 243 MHz.

(d) *Modulation duty cycle.*

Step (1) Activate the EPIRB.

Step (2) Trigger the oscilloscope and store at least one complete cycle of the audio waveform.

Step (3) Measure the period (T) of the waveform. The period is the time difference between the half voltage points at the beginning and end of one cycle of the waveform. See Figure 2.

Step (4) Measure the pulse width (t_p) of the waveform. The pulse width is the time difference between the half voltage points on the rising and falling portions of the waveform. See Figure 2.

Step (5) Calculate the duty cycle (D) as follows:

$$D = \frac{t_p}{T}$$

Step (6) Repeat Steps 2 through 5 a sufficient number of times to determine the highest and lowest duty cycles.

Step (7) Record instrument settings and the highest and lowest duty cycles in percent.

Step (8) Repeat Steps 1–7 for 243 MHz.

(e) *Sweep repetition rate.*

Step (1) Connect a speaker to the detected output of the spectrum analyzer or receiver so the audio frequencies are audible. Alternatively, an FM radio tuned to 108 MHz placed in the vicinity of the EPIRB may be used.

Step (2) Activate the EPIRB.

Step (3) Time the number of audio sweeps (N) for a one minute interval.

Step (4) Calculate the audio sweep rate (R) using R=N/60.

Step (5) Record instrument settings and the sweep repetition rate in Hertz.

§ 2.1515 Spectral measurements.

(a) *Set-up.* Spectral measurements are to be performed in a shielded room.

Step (1) Place the EPIRB directly on a metal ground plane, such as the shielded room floor. The EPIRB should be powered by its own internal battery with its standard antenna attached and deployed.

Step (2) Place a suitable receiving antenna at a convenient distance from the EPIRB and connect it to the input of the spectrum analyzer to observe the radiated signal from the EPIRB. A signal generator and frequency counter capable of operating at 121.5 and 243 MHz are also required for these tests.

(b) *Occupied bandwidth test.*

Step (1) Activate the EPIRB and observe the fundamental frequency on a spectrum analyzer. Adjust location of receiving antenna and spectrum analyzer controls to obtain a suitable signal level (i.e., a level which will not overload the spectrum analyzer, but is far enough above the noise floor to allow determination of whether or not the sidebands are attenuated by at least the amount required in the rules).

Step (2) Set spectrum analyzer controls as follows:
I.F. bandwidth: 10 kHz
Video filter: OFF or as wide as possible
Scan time: 100 ms./div.
Amplitude scale: 10 dB/div.
Scan width: 20 Hz/div.
Center frequency: 121.5 MHz

Step (3) Record the signal level in dbm.

Step (4) Calculate the mean power reference level by adding 10 $\log_{10}$ (D), where D is the modulation duty cycle determined in section 2.1513(d) of this part, to the recorded signal level.

Step (5) Set spectrum analyzer controls as follows:
I.F. bandwidth: 100 Hz
Video filter: OFF or as wide as possible
Scan time: 10 sec./div.
Amplitude scale: 10 dB/div.
Scan width: 20 kHz/div.

Step (6) Check the modulation sidebands for compliance with the required attenuation below the mean power reference level specified in § 80.211 of the rules.

Step (7) Record how the test was performed, instrument settings and the occupied bandwidth in kHz and the 3 dB bandwidth of the carrier in Hz. (See § 2.1517 of this part).

Step (8) Repeat Steps 1 through 7 for the signal at 243 MHz.

(c) *Signal enhancement test.*

The setup specified in § 2.1515(a) is to be used in this method of measuring signal enhancement. Other methods may be used if shown to give results equivalent to or more accurate than this method.

Step (1) Activate the EPIRB and locate the carrier frequency at 121.5 MHz on the spectrum analyzer. Adjust location of receiving antenna and spectrum analyzer controls to obtain a suitable signal level (i.e., a level which will not overload the analyzer, but is far enough above the noise floor to allow sidebands at least 40 dB below the carrier to be viewed).

Step (2) Set the spectrum analyzer controls as follows:
I.F. bandwidth: 10 kHz
Video filter: OFF or as wide as possible
Scan time: 100 ms./div.
Amplitude scale: 5 dB/div.
Scan width: 10 kHz/div.
Center frequency: 121.5 MHz

Step (3) Record the amplitude in dBm.

Step (4) Calculate the total power output by adding 10 log(D), where D is the modulation duty cycle determined in § 2.1513(d) of this part, to the recorded signal level.

Step (5) Set the spectrum analyzer controls as follows:
I.F. bandwidth: 60 Hz or less
Video filter: OFF or as wide as possible
Scan time: 10 sec./div.
Amplitude scale: 5 dB/div.
Scan width: 20 Hz/div.
Center frequency: 121.5 MHz

Step (6) Measure and record the carrier power dBm as displayed on the spectrum analyzer.

Step (7) Calculate the ratio of carrier power to total power from Steps 4 and 6 using the following formula:

$$\frac{\text{carrier power}}{\text{total power}} = \log_{10}^{-1}\left[\frac{dB_c - dB_T}{10}\right]$$

dB_c = carrier power in step 6

dB_T = total power in step 4

Step (8) Record instrument settings, sample calculation and the percent of power within ±30 Hz at 121.5 MHz or ±60 Hz at 243 MHz of the carrier frequency.

Step (9) Repeat the above measurement Steps 1 through 8 for 243 MHz. For the higher frequency, the I.F. bandwidth in step 5 must be 120 Hz or less.

(d) *Carrier frequency test.*

The setup specified in § 2.1515(a) is to be used in measuring the carrier frequency.

Step (1) Activate the EPIRB and locate the 121.5 MHz signal on the spectrum analyzer. Adjust location of receiving antenna and spectrum analyzer controls to obtain a suitable signal level.

Step (2) Set the spectrum analyzer controls as follows:
I.F. bandwidth: 100 Hz
Video filter: OFF or as wide as possible
Scan time: 10 sec./div.
Amplitude scale: 10 dB/div.
Scan width: 20 Hz/div.
Center frequency: 121.5 MHz

Step (3) Combine the output of the signal generator with the EPIRB signal at the input to the spectrum analyzer.

Step (4) Adjust amplitude and frequency of signal generator output to determine center of carrier frequency component.

Step (5) Measure signal generator frequency with frequency counter with accuracy of 5 PPM or better and record as carrier frequency.

Step (6) If applicable, change the type of modulation of the EPIRB and record the shift in carrier frequency as observed on the spectrum analyzer display.

Step (7) Repeat the above measurement Steps 1 through 6 for 243 MHz.

§ 2.1517 Data recording/reporting requirements.

The test report for an EPIRB shall contain the following information:

(a) Specific identification, including the FCC ID, model and serial numbers, of the EPIRB under test.

(b) The name and location of the test sites used for the measurements.

(c) A description of the instrumentation and equipment, including antennas, used to perform the tests. For purchased equipment, the type, manufacturer and model number are generally sufficient as a description.

(d) The test results and associated comparative information.

(e) A description of any modifications made to the EUT or other system components during the testing.

(f) A description and justification of all deviations from the procedures described herein.

(g) The name and qualifications of the person responsible for the tests.

(h) The date the tests were performed.

(i) A statement signed by the individual responsible for the test that the EPIRB as tested complies or does not comply with the applicable FCC rules.

(j) A statement signed by the individual responsible, either directly or indirectly, for production or marketing of the device tested that the unit tested is representative of the equipment that all be marketed.

BILLING CODE 6712-01-M

Figures

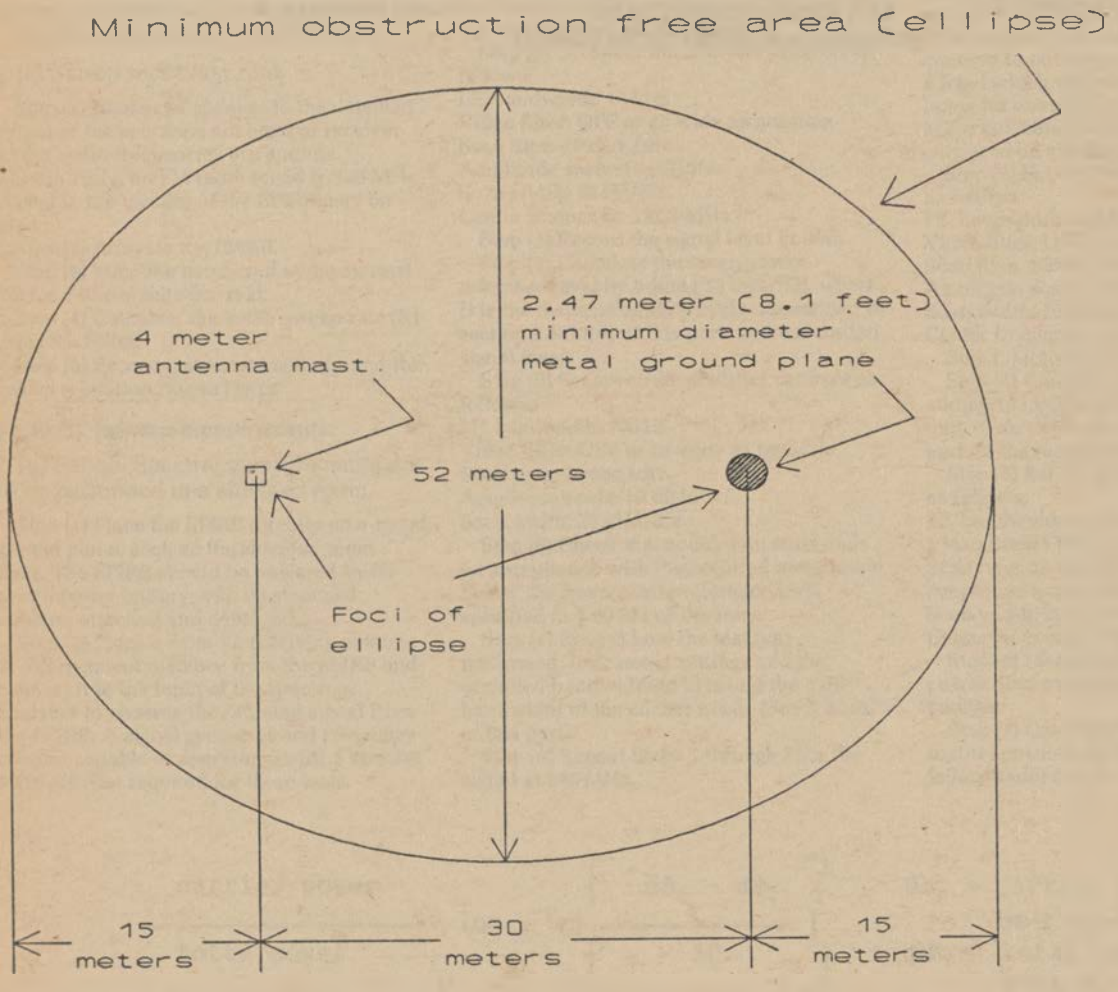
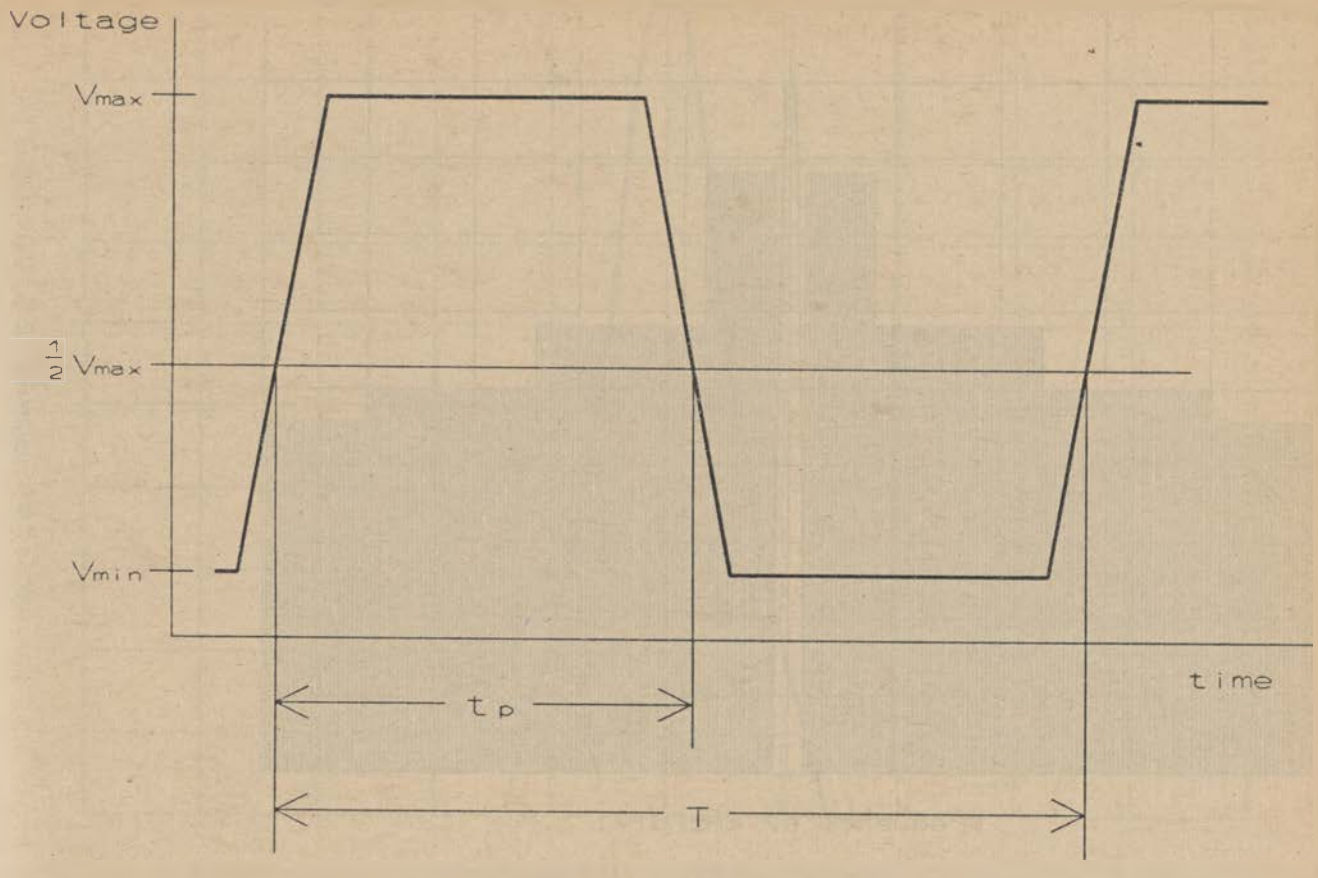


Figure 1 - Measurement Site



Frequency: $$f = \frac{1}{T}$$

Duty cycle: $$D = \frac{t_p}{T}$$

Modulation factor: $$M = \frac{V_{max} - V_{min}}{V_{max} + V_{min}}$$

Figure 2 - Typical Audio Waveform

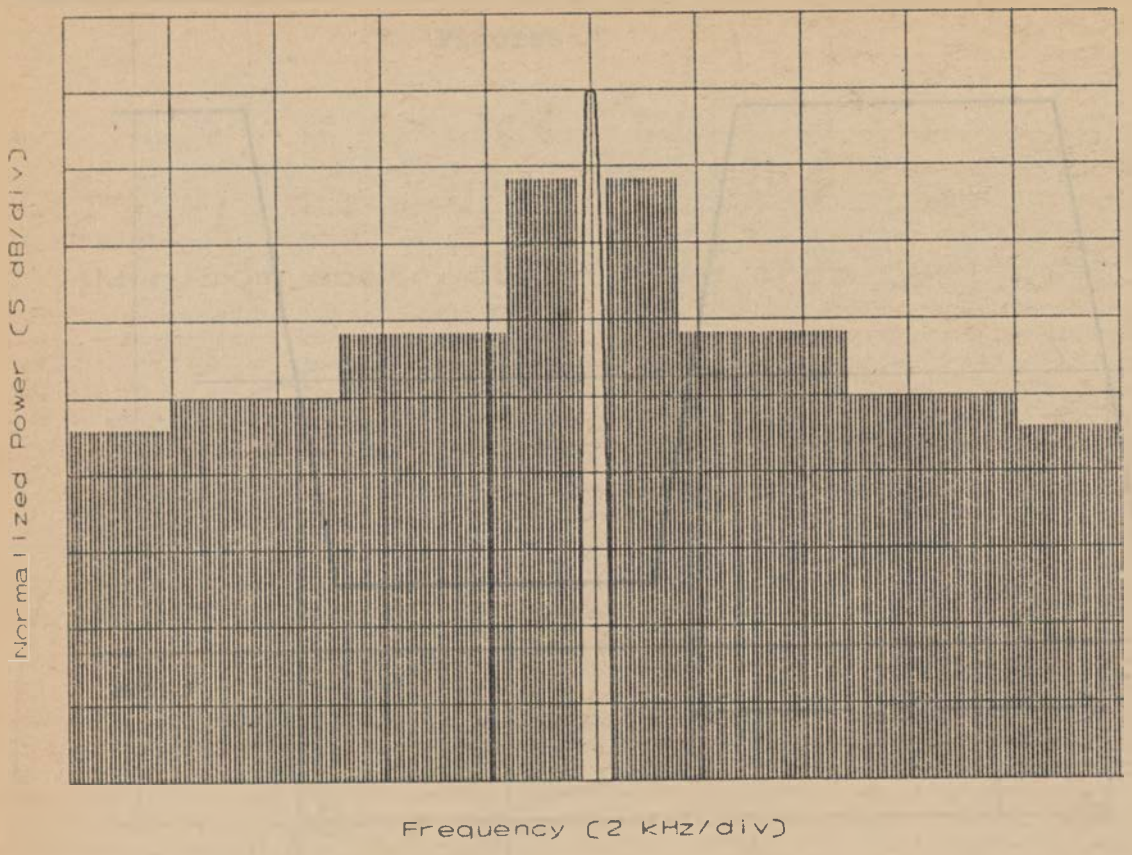


Figure 3 - Example of ideal EPIRB Spectrum

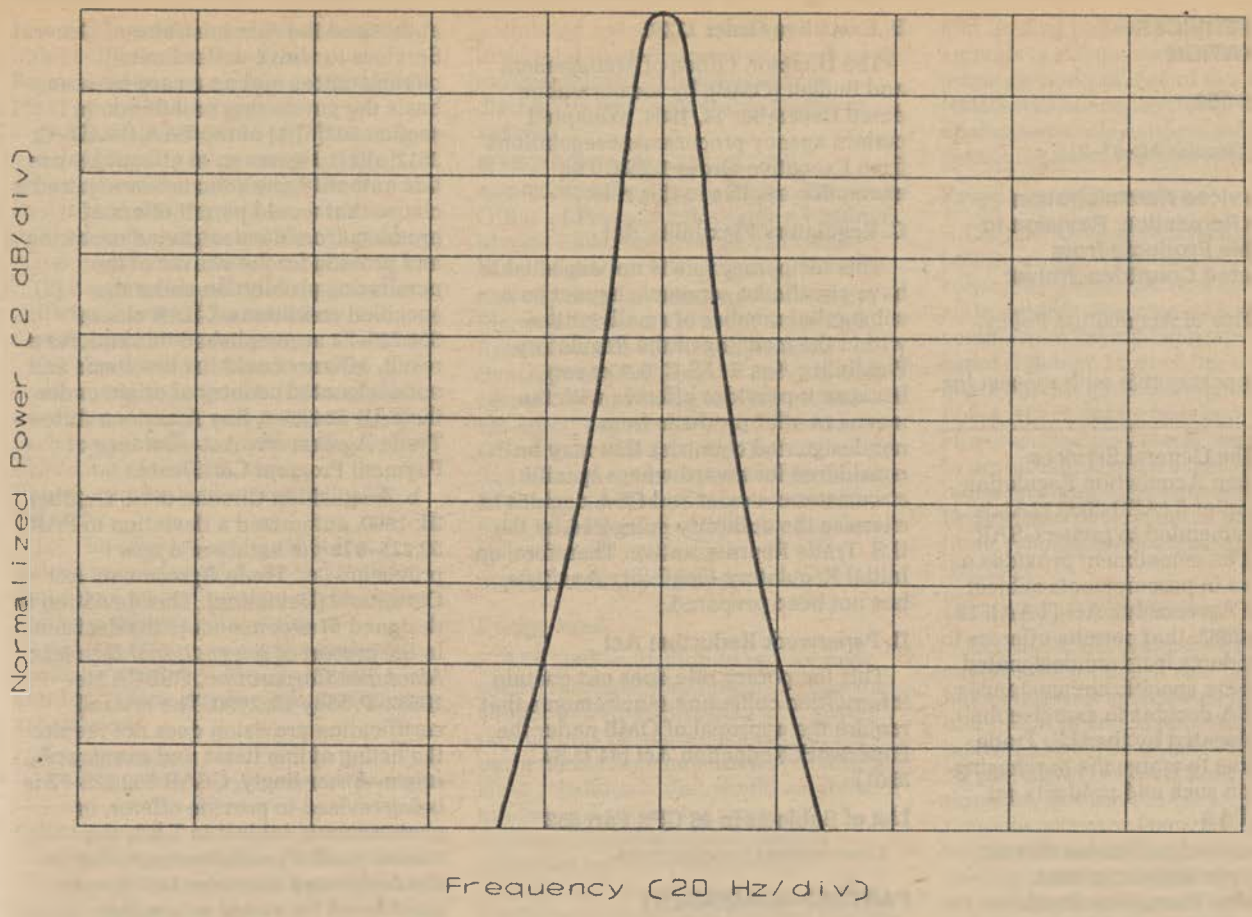


Figure 4 - Example of EPIRB Carrier Component

[FR Doc. 91-6503 Filed 3-19-91; 8:45 am]
BILLING CODE 6712-01-C

GENERAL SERVICES ADMINISTRATION

48 CFR Part 552

[Acquisition Circular AC-91-2]

General Services Administration Acquisition Regulation; Revision to GSAR Eligible Products from Nondesignated Countries-Waiver

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Temporary rule with request for comments.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR), Chapter 5 (APD 2800.12A), is temporarily amended to revise GSAR 552.225-72. The amendment provides a clause for use in procurements subject to the Trade Agreements Act (TAA), 19 U.S.C. 2501-2582, that permits offerors to offer end products from nondesignated countries where specific circumstances exist and GSA decides to exercise the authority delegated by the U.S. Trade Representative to waive the purchasing prohibition on such end products set forth in the TAA.

DATES: Effective date: March 25, 1991. Expiration Date: March 24, 1992. Comment Date: Comments should be submitted to the Office of GSA Acquisition Policy at the address shown below on or before April 30, 1991 to be considered in the final rule.

ADDRESSES: Comments should be addressed to Marjorie Ashby, Office of GSA Acquisition Policy, 18th & F Streets NW., room 4026, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Edward J. McAndrew, Office of GSA Acquisition Policy (202) 501-1224.

SUPPLEMENTARY INFORMATION:

A. Determination to Issue a Temporary Regulation

A determination has been made to issue the regulation in GSAR as a temporary rule. This action is necessary to provide a clause for use in procurements subject to the Trade Agreements Act that enables offerors to list products from nondesignated countries to be considered for award where specific circumstances exist and GSA decides to exercise the authority delegated by the U.S. Trade Representative to waive the purchasing prohibition in the TAA. However, pursuant to Public Law 98-577 and FAR 1.501, public comments are solicited and will be considered in formulating a final rule.

B. Executive Order 12291

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule.

C. Regulatory Flexibility Act

This temporary rule is not expected to have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because it provides offerors with the means to offer products from nondesignated countries that may be considered for award where specific circumstances exist and GSA decides to exercise the authority delegated by the U.S. Trade Representative. Therefore, an Initial Regulatory Flexibility Analysis has not been prepared.

D. Paperwork Reduction Act

This temporary rule does not contain information collection requirements that require the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501).

List of Subjects in 48 CFR Part 552

Government procurement.

PART 552—[AMENDED]

1. The authority citation for 48 CFR part 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. 48 CFR part 552 is amended by the following Acquisition Circular:

General Services Administration Acquisition Regulation Acquisition Circular (AC-91-2)

March 11, 1991.

To: All GSA Contracting Activities

Subject: Revision to GSAR 552.225-72, Eligible Products from Nondesignated Countries—Waiver

1. *Purpose.* The Acquisition Circular temporarily amends the General Services Administration Acquisition Regulation (GSAR) Chapter 5 (APD 2800.12A) to revise GSAR 552.225-72, Eligible Products from Nondesignated Countries—Waiver and to authorize its use in the manner prescribed in this Acquisition Circular.

2. *Background.*

a. The Trade Agreements Act (TAA) prohibits the purchase of eligible products originating in a nonresidential country in procurement subject to the TAA unless a waiver is obtained from the U.S. Trade Representative or designee. In this regard, the U.S. Trade Representative has previously authorized the Administrator of General Services to waive under limited circumstances and on a case-by-case basis the purchasing prohibition in section 302(a)(1) of the TAA (19 U.S.C. 2512(a)(1)). However, to effectively use this authority, the solicitation required a clause that would permit offers of products from nondesignated countries and provide for the waiver of the purchasing prohibition under the specified conditions. GSAR clause 552.225-72 accomplished this end. As a result, offerors could list line items and nondesignated country of origin under the FAR 52.225-8, Buy American Act—Trade Agreements Act—Balance of Payment Program Certificate.

b. Acquisition Circular 90-2, October 24, 1990, authorized a deviation to FAR 52.225-8 in the nature of a new provision, i.e., Trade Agreements Act Certificate (Deviation). This deviation is designed to accommodate the decision in the protest of *International Business Machines Corporation,* GSBCA No. 10532-P, May 18, 1990. The revised certification provision does not require the listing of line items and country of origin. Accordingly, GSAR 552.225-72 is being revised to provide offeror, in procurements subject to TAA, the means to offer products originating in nondesignated countries that may be considered for award where the specified circumstances exist and GSA decides to exercise the authority delegated by the U.S. Trade Representative to waive the purchasing prohibition.

3. *Effective Date.* March 25, 1991.

4. *Expiration Date.* This Acquisition Circular expires March 24, 1992, unless cancelled earlier.

5. *Reference to Regulation.* Section 552.225-72.

6. *Explanation of change.* Section 552.225-72 is revised to read as follows:

552.225-72 Eligible Products from Nondesignated Countries—Waiver.

As prescribed in 525.407(a), insert the following clause:

Eligible Products From Nondesignated Countries—Waiver (March 1991)

(a) In accordance with the Trade Agreements Act of 1979 and 48 CFR 25.402(b), no eligible product that originates in a nondesignated country may be purchased by a Federal agency. However, this restriction may be waived before award when it is determined to be in the national interest. Accordingly, offers to furnish products originating in a nondesignated country, identified in paragraph (c) below, may be submitted in response to this solicitation and will

be considered for award if a waiver is obtained from the U.S. Trade Representative or a designee (19 U.S.C. 2512) on the basis that:

(1) No responsive bid or technically acceptable offer from a responsible offeror is received offering U.S. or designated country end products as defined in the clause entitled "Trade Agreements Act" in this solicitation; or

(2) Responsible offerors do not offer a sufficient quantity to meet the Government's requirements.

(b) The determination to seek a waiver is at the sole discretion of the acquiring activity, and the granting of such waiver will be at the sole discretion of the U.S. Trade Representative or designee. (48 CFR 525.402).

(c) The offeror certifies that the following product(s) is an end product other than an end product of the United States, a designated country or a Caribbean Basin country as such end products are defined in the clause entitled "Trade Agreements Act" in this solicitation:

Line Item Number

Country of Origin

(End of Clause)

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy.

[FR Doc. 91-6559 Filed 3-19-91; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 900807-1050]

RIN 0648-AD42

Feeding Populations of Marine Mammals in the Wild

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NMFS is issuing a final rule that amends the definition of "take" under the Marine Mammal Protection Act (MMPA) to include feeding marine mammals in the wild, and adds a new definition of "feeding." As a result, feeding dolphins, porpoise, whales, seals and sea lions in the wild will be prohibited unless the feeding is incidental to another activity such as the routine discard of fish bycatch or discharges from processing plants or vessels.

EFFECTIVE DATE: April 19, 1991.

ADDRESSES: Dr. Nancy Foster, Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Margaret Lorenz, Office of Protected Resources, 301-427-2322; Douglas Beach, Northeast Region, 508-281-9254; James Lecky, Southwest Region, 213-541-6693; Eugene Nitta, Pacific Area Office, 808-955-8831; Jeff Brown, Southeast Region, 813-893-3366; Brent Norberg, Northwest Region, 206-526-6110; and John Sease, Alaska Region, 907-586-7233.

SUPPLEMENTARY INFORMATION:

Background

At a 1988 workshop to review and evaluate whale watching programs and similar activities that may affect wild populations of marine mammals, the participants recommended that NMFS issue regulations that would establish a minimum distance for anyone approaching whales and prohibit activities such as feeding wild populations of marine mammals. The participants expressed concern that the public's increasing interest in observing, approaching, and feeding marine mammals may cause biological problems for the marine mammals, and these activities may be a violation of the MMPA and the Endangered Species Act. NMFS is addressing the recommendations regarding minimum approach distances in a separate rulemaking.

On August 29, 1990, NMFS published a proposed rule (55 FR 35328) to amend the definition of "take" to include feeding marine mammals in the wild. The comment period ended November 8, 1990. Public hearings on the proposed rule were held in Panama City, Florida; Hilton Head Island, South Carolina; Corpus Christi, Texas; and Silver Spring, Maryland. In the same issue of the **Federal Register** (55 FR 35336), NMFS published its policy regarding applications for public display permits to approach, harass, and feed Atlantic bottlenose dolphins in the wild. NMFS concluded that the potential adverse impacts on the populations of stocks of Atlantic bottlenose dolphin and the marine ecosystem outweigh the potential benefit of the proposed activities. NMFS concluded that issuing a permit authorizing an activity intended to directly or indirectly alter the natural and feeding behavior of groups of wild animals is not consistent with the purposes and policies of the MMPA. NMFS will not accept for review any applications requesting a public display permit for these types of activities.

Response to Comments

Comments were received from tour boat operators and customers, conservation groups, oceanaria groups, state wildlife agencies, scientists, the commercial fishing industry and the general public. Most of the comments concerned dolphin feeding cruises in the areas where public hearings were held. However, the purpose of the final rule is to prohibit feeding of other marine mammals under the jurisdiction of the Department of Commerce (seals, sea lions, whales, and porpoise) as well as dolphins.

Interactions with Humans

Comment: Several commenters support the proposed rule because they have observed individuals using fish or other food to entice dolphins to their boats and then harassing the dolphins by pouring beer down their throats, throwing fish in their blow holes, jumping on top of them, and trying to swim with them. They believe that all feeding must be prohibited (both by private boaters, commercial tour boat operators, and others) so that marine mammals will not be encouraged to interact with humans.

Response: NMFS agrees that the prohibition should apply to both private boaters as well as commercial tour boat operators, and any other platform used for the purpose of feeding marine mammals in the wild.

Comment: Feeding dolphins in the wild has been an exciting and rewarding educational experience for many people of all ages. This is the only opportunity for many people to interact with marine mammals in their natural environment rather than in captivity. Feeding promotes an interest in the environment.

Response: NMFS agrees that close contact with marine mammals can be a rewarding experience in many ways. However, we have determined that activities with the purpose of giving or offering food is not in the animals' best interests. We believe that observing, rather than feeding, marine mammals in the wild, can be an equally rewarding and educational experience, and will not harm the animals if NMFS' guidelines and/or regulations are followed.

Behavior Modification

Comment: Both the State of South Carolina Wildlife and Marine Resources

Department and the State of Florida Department of Natural Resources support the proposed rule and agree with NMFS' findings that feeding marine mammals in the wild may significantly change their behavior by disrupting their normal feeding patterns.

In recent years since feeding dolphins has become popular by recreational and commercial tour boat operators, marine scientists from the State of South Carolina have documented changes in bottlenose dolphin behavior. These changes include an increasing number of dolphins feeding off discarded fish around commercial fishing boats. Previous interactions between commercial fishing and dolphins centered around the dolphins riding bow wakes or briefly investigating nets. Also, a state conservation officer and biologist reported that a dolphin approached their boat and actually launched itself out of the water and rested on the gunwale on the side of the boat.

One commenter noticed a change in the behavior of dolphins being studied in the Corpus Christi Bay (Texas) area. The animals are becoming so familiar with people that they seem to be losing their natural fear of humans. Another commenter stated that dolphins in Corpus Christi Bay are becoming so tame that they are coming inside the city marina itself and near the ship channel which increases the animal's chances for interacting with humans.

In Hilton Head, a commenter reported that when he started working on dolphin feeding cruises 3 years ago, about 5 to 7 dolphins regularly came to the boat. Now, 15 individual dolphins regularly approach the boat to be fed.

Response: NMFS shares the commenters' concern that feeding operations may be changing the natural behavior of marine mammals.

Transmitting Diseases Through Feeding

Comment: Several commenters expressed concern that feeding marine mammals could transmit diseases from humans to the animals and from animals to humans. Open wounds on feeders and bites by the animals are possible routes for two-way transmission of disease. Marine mammals acquire infectious organisms through skin lesions, respiratory tract, or oral ingestion. Oral ingestion is the primary disease transmission route in feeding wild marine mammals due to microbially-contaminated food.

One commenter, who cited the example of a trainer bitten by a dolphin in captivity developing indolent ulcers in the region of the bite, wondered whether some humans who have been observed feeding dolphins by placing fish in their mouths, leaning off their boats, and having the dolphin take the fish were aware of their vulnerability to disease transmission if they were bitten by the dolphins.

Hazards to dolphins from bacterial infections include a lethal disease (erysipelas) that occurs either as acute sepiticemia or as chronic rhomboid lesions. It is usually transmitted to dolphins via contaminated fish. Several other bacterial infections and Scombroid poisoning have been documented as occurring in dolphins as a result of contact with humans.

Response: NMFS is aware that the potential exists for transmission of diseases between marine mammals and humans (Wilkinson, 1990). Bites from marine mammals carry the attendant danger of infection and disease transmission common to any type of animal bite. Also, there are a number of disease agents that are common to both humans and marine mammals although documentation of transmission is lacking.

Interaction with Boats

Comment: Some commenters do not agree with NMFS' position that feeding dolphins increases the likelihood that they will collide with boats. Because of their echolocation abilities, dolphins know exactly where the boats are at all times. Also, dolphins are very mobile animals, and they are able to avoid collisions with boats.

Other commenters agreed with NMFS' concern that feeding operations will increase the chances of marine mammals interacting with boats. As a member of a network to work with stranded marine mammals, one commenter has handled dead dolphins on the beaches that have had wounds that probably were inflicted by boat propellers. Some had apparently been hit by the boat itself. Propeller scars have been seen on live dolphins' fins and bodies. Several commenters stated that they have actually witnessed dolphins being hit by boat propellers, snagged by fish hooks, and chased down by high-powered motor boats.

Response: NMFS continues to believe that feeding marine mammals in the wild increases the likelihood of interactions with vessels which increases the chance of injuries to the animals. In addition to vessel strikes, NMFS is concerned that any activity that encourages vessel interactions and identifies vessels as food sources may increase the rate at which marine mammals forage around vessels, become entangled in fishing gear, or are even shot. Necropsy reports from the Washington, Oregon, and California coasts confirm that gunshot was a common cause of death in seals and sea lions. In 1989, six bottlenose dolphins were shot in the Gulf of Mexico and off the east coast of Florida presumably by those who perceived the animals were interfering with their activities. The Smithsonian Institution Stranding Network data identified entanglement as the cause of death for 10 bottlenose dolphins in the Gulf of Mexico in 1987 and 1989 and 15 off the east coast of Florida from 1984–1989. Observer data from the first year of a 5-year program instituted by Congress and implemented by NMFS to assess marine mammal incidental takes showed that 89 dolphins and porpoises were entangled in coastal gillnets and trawl fisheries.

Legal Authority to Issue Rule

Comment: NMFS must find that the feeding of wild marine mammals is a "take" within the meaning of the MMPA, and a regulatory definition that expands the meaning beyond the disturbing or molesting standard of the current regulation is not consistent with the definition of "take" in the MMPA.

Response: "Take" is defined by the MMPA to mean "to harass, hunt, capture or kill or attempt to harass, hunt, capture, or kill any marine mammal." NMFS has the authority to interpret further the terms used in the MMPA. NMFS believes that this regulatory interpretation of the term "take" is consistent with the underlying statutory definition because feeding wild marine mammals has the potential to harm them in several ways. Marine mammals may be killed either directly from the feeding (e.g., by contracting a disease or by eating tainted food) or indirectly, through behavior modification (e.g., from exposure to cold weather if migration patterns change or from entanglement in fishing gear).

Although "harassment" is not defined in the MMPA, its legislative history indicates a Congressional intent that the term be interpreted broadly, and NMFS believes that feeding marine mammals in the wild constitutes harassment. Also, including feeding within the scope of "harassment" is consistent with NMFS' previous use of the term. In its January 4, 1989, (52 FR 44915) Notice of Interpretation of "Taking by Harassment" in regard to humpback whales in the Hawaiian Islands area, NMFS stated that "any * * * act or omission that substantially disrupts the normal behavioral pattern of a humpback whale is also presumed to constitute harassment." Feeding marine mammals in the wild disrupts their

normal behavior, potentially resulting in serious harm, and should be considered to constitute "harassment."

The U.S. Fish and Wildlife Service (FWS) has adopted the following definition of "harass" under the MMPA (50 CFR 17.3): " 'Harass' in the definition of 'take' in the Act means an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to breeding, feeding, or sheltering."

Until now, NMFS has not felt the need to define specifically within the regulations every single act which is considered to be harassment. However, even after NMFS notified several tour boat operators that it considered feeding to be a form of harassment that the operators should end, the practice did not stop.

Discharge of Food Waste and Fish Bycatch

Comment: Does the feeding prohibition apply to discharge of ground food waste from offshore platforms which is regulated under Coast Guard regulations? Does the rule apply to the discarding of bycatch from fishing vessels or to the release of effluent or offal from fish-processing plants or factory ships?

Response: The purpose of the regulation is to prohibit intentional feeding of wild populations of marine mammals. Marine mammals often follow fishing vessels that are releasing bycatch (fish that is caught in addition to a target species such as shrimp), and marine mammals sometimes gather to feed near the outfall of fish processing plants. Some species of marine mammals are opportunistic feeders, and will follow fishing vessels knowing that food may be available. Therefore, in addition to amending the definition of "take" to include feeding marine mammals in the wild, NMFS is defining "feeding" to further clarify what activities are considered a "take."

The definition states: "*Feeding* is offering, giving, or attempting to give food or non-food items to marine mammals in the wild. It includes operating a vessel or providing other platforms from which feeding is conducted. It does not include the routine discard of bycatch during fishing operations or the routine discharge of waste or fish byproducts from fish processing plants or other platforms if the discharge is otherwise legal and is incidental to operation of the activity."

Intentional vs. Unintentional Feeding

Comment: If feeding marine mammals in the wild is harmful, what is the distinction between a marine mammal eating food that is given for the purpose of attracting the marine mammal to a person or vessel and food that the marine mammal eats as the result of unintentional feeding such as bycatch that is regularly discarded from a fishing boat or fish byproducts from a processing plant.

Response: NMFS believes that, in some cases, the results or effects of unintentional feeding may also be harmful to marine mammals. However, NMFS is concerned that where the level of profit depends on the ability to attract marine mammals, the potential for adverse effects may be greater. This would also apply to individuals who feed marine mammals as part of a recreational activity because the level of enjoyment depends on that person's ability to attract marine mammals.

In addition, intentional feeding is a relatively new activity that should not be allowed to expand and to exacerbate the problems that have resulted from marine mammals' changing their natural feeding patterns because of human-related activities. By prohibiting intentional feeding activities, NMFS is reducing rather than significantly increasing these problems.

In addition, the issue of bycatch is being addressed by the Congress and the Federal government through other laws and regulations that are aimed at reducing the high levels of bycatch associated with commercial fishing.

Public Display Quotas

Comment: If NMFS decides that feeding marine mammals in the wild is a "take," this should not count against the quotas for removal of marine mammals from the wild for public display. Activities in the wild should not be considered as "public display." Also, the rule as proposed could be applied to feeding activities presently being conducted under existing permits for scientific research or public display.

Response: NMFS has determined that feeding wild populations of marine mammals is a from of harassment and, therefore, prohibited unless an exception has been made. Removing animals from the wild for public display is considered under "capture" for which an exception has been made. Amending the definition of "take" and adding a new definition of "feeding" does not affect any quotas for removal of animals from the wild.

NMFS is currently considering the definition of "public display," and a proposed definition will be published for comment and review at a later date. NMFS has already stated (55 FR 35336; August 29, 1990) that it will not consider any requests for public display permits for bottlenose dolphin feeding cruises.

A holder of a public display or scientific research permit already has an exception from the prohibition on "taking." Therefore, the rule will not affect those who are conducting activities under a permit or other authorization.

Lack of Scientific Data

Comment: The scientific evidence is insufficient to support a ban on feeding marine mammals in the wild.

Response: NMFS does not agree that a specific study on the effects of feeding marine mammals in the wild is necessary before NMFS can define feeding as a form of "harassment." It is the expert opinion of marine mammal scientists that feeding wild populations of animals may alter their behavior by disrupting social patterns, migration and feeding habits.

The Marine Mammal Commission, in consultation with its Committee of Scientific Advisors, made the following comments regarding the proposed rule to amend the regulatory definition of take: "Among other things, feeding marine mammals may: (1) Condition animals to approach vessels, piers, *etc.* where there is an increased likelihood that they will become entangled in fishing gear, be struck by vessels, or be shot, poisoned, or fed foreign objects; (2) cause animals to become dependent on such food sources and become less able to find and catch natural prey when feeding is discontinued; (3) alter migratory patterns, thereby subjecting animals to food shortages or inhospitable conditions that otherwise would be avoided; (4) condition animals to expect food from people, cause aggressive behavior when food is not offered; and (5) expose animals to and make them more susceptible to disease."

In considering passage of the Marine Mammal Protection Act, Sen. Robert Packwood said the following: "Scientists generally will state that our level of knowledge of marine mammals is very low * * *. Barring better and more information, it would, therefore, appear to be wise to adopt a cautious attitude toward the exploitation of marine mammals (Cong. Rec. S.15680—daily ed., Oct. 4, 1971)."

Wildlife Feeding Prohibitions by Other Federal Agencies

Comment: How does the prohibition on feeding marine mammals in the wild

relate to prohibitions on feeding animals in National Parks? Isn't the purpose of prohibiting people from feeding animals such as bears in National Parks to protect the people from the animals and not vice versa?

Response: Several Federal agencies have taken action to protect animals from humans by prohibiting the feeding of animals in parks and wildlife refuges. While prohibiting the feeding of animals such as bears in National Parks may be primarily for the purpose of protecting humans, the National Park Service and the U.S. Fish and Wildlife Service (FWS) also prohibit feeding to protect animals from humans. For example, the FWS prohibits feeding waterfowl on its National Refuges because "regular feeding can cause dependency on people for food, bird/people conflicts, and spread of disease." At the Key Deer Refuge (Florida), the feeding of deer is prohibited because it is detrimental to the well-being of the species. One concern cited is that deer that are accustomed to being hand fed lose their natural fear of humans and become easy targets for poachers. In both examples, the FWS did not conduct any specific scientific studies to support its ban on feeding (pers. comm. Nancy Marks, FWS).

Economic Impact to Local Communities

Comment: The economic impact of the eight tour boat operations to the local community of Panama City, Florida, is estimated to be in excess of $6 million. A prohibition on feeding dolphins will adversely impact the local economy of this community and other coastal areas where "dolphin feeding" tours operate. Other commeters support the proposed rule because it does not prevent tour boat operators from taking customers out on cruises to watch marine mammals in their natural environment. Some of the tour boat operators who currently operate "dolphin feeding" cruises, operated successful sightseeing cruises long before dolphin feeding cruises became popular, and they can return to these operations that do not involve feeding marine mammals without it affecting their business.

Response: Dolphin feeding cruises are frequently combined with other sight-seeing acitvities such as viewing fish, marine mammals, sea birds and other natural resources. Since there are usually reasons other than feeding dolphins for taking these excursions, there is no way to know whether the number of passengers taking these trips will decline if dolphin feeding is not a part of the excursion. Tourists come to these coastal areas for many reasons, and there is no reason to believe they will not continue to come to coastal areas if feeding marine mammals is prohibited. They can continue to take sightseeing trips on boats to observe marine life because this rule only prohibits feeding; it does not prohibit trips to observe marine mammals and other sea life.

Also, in the legislative history of the MMPA, Congress stated that "The effect of this set of requirements is to insist that the management of the animal populations be carried out with the interest of the animals as the prime consideration * * *. The primary objective of this management must be to maintain the health and stability of the marine ecosystem; this in turn indicates that the animals must be managed for their benefit and not for the benefit of commercial exploitation (H. Rep. No. 707, 92nd Cong., 1st Sess. 18, 22 (Dec. 4, 1971))."

Compliance with 16 U.S.C. 1373

Comment: NMFS should comply with the section of the MMPA that requires certain factors, such an existing and future levels of marine mammal species and population stocks, to be considered when prescribing regulations on taking marine mammals.

Response: This regulation does not allow a "take" of marine mammals, rather it further defines the meaning of the word. Therefore, NMFS is not required to consider the factors in 16 U.S.C. 1373.

Marine Mammal Feeding Should be Regulated, Not Prohibited

Comment: Instead of prohibiting feeding cruises, they should be regulated. For example, give permits or licenses to tour boat operators that would include requirements for who may do the feeding, what type of food may be used and how it should be stored. Also, require the operators to include educational programs as a part of the feeding, and restrict the number of licensed cruises.

Response: NMFS denied a request for a public display permit to feed Atlantic bottlenose dolphins as part of cruises to observe dolphins. NMFS denied the request based on a finding that the proposed taking is not consistent with the purpose and policy of the MMPA. NMFS concluded that the potential adverse impacts on the bottlenose dolphin outweigh the potential benefit of the feeding. NMFS believes that development and advertising of commercial feeding programs may increase the opportunity and encourage recreational and other boaters to feed dolphins. Although the applicant indicated that due regard would be paid to the animals' safety by restricting the activity of his vessel and clients, he cannot ensure that the animals will not approach other vessels where safeguards do not exist. Also, the dead fish offered to the animals might condition them to seek other dead fish such as those found on baited hooks or in fish nets.

Captivity and Other Takings of Marine Mammals vs. Feeding Programs

Comments: Activities that involve feeding marine mammals in the wild seem harmless in comparison to the taking (usually killing) of marine mammals incidental to commercial fishing and other activities and the permanent removal of marine mammals from the wild for public display?

Response: NMFS regulates and manages the "taking" of marine mammals based on the mandates of the Marine Mammal Protection Act. The MMPA allows a "take" of marine mammals incidental to commercial fishing and other activities. However, since the MMPA was enacted in 1972, NMFS has spent a major portion of its time and efforts to reduce the incidental take of marine mammals and marine species incidental to commercial fishing.

Also, the Congress provided for permits for the public display of marine mammals. Applicants for public display permits must offer a program for education or conservation purposes consistent with the policies and purposes of the MMPA. Removals from the wild under the permit system managed by NMFS are allowed only if a determination is made that the capture will have no significant adverse impact on the affected populations or the ecosystem of which they are a part. In addition, facilities and feeding operations are regulated and monitored.

Conclusion

NMFS did not receive any new information during the public comment period that would change the conclusion of the proposed rule which stated that feeding populations of marine mammals in the wild is harmful because it disrupts their natural behavior and normal feeding patterns and, therefore, is contrary to the intent and purposes of the MMPA. Many commenters expressed positive emotions about their feeding encounters with marine mammals, especially dolphins. However, the purpose of the MMPA is to protect these animals, and no matter how thrilling the experience may be for humans, NMFS has determined that it is not in the best interest of the animals to be fed by humans.

NMFS agrees with the American Society of Mammalogists' response to the proposed rule: "Wild marine mammals obtain their optimum diet through natural foraging. Feeding by humans will result in animals receiving uncontrolled types of food, unknown amounts of food and probably feeding on non-food items. Most agencies responsible for managing terrestrial, free-ranging mammals have learned through many years of experience that provisioning, both intentionally and unintentionally can have serious detrimental results to both the wildlife and the people. In this regard, marine mammals are no different. Marine mammals learn quickly to be attracted to vessels that have food. Once individual animals learn to use a human-fed source, it is difficult to stop the begging behavior. This leaves the animals susceptible to economic conflicts with fishermen, entanglement in fishing gear and hazards associated with being close to a moving vessel. Intentional feeding only exacerbates animal-human conflicts. Natural movement patterns of marine mammals could be disrupted by providing artificial food sources. The quality of food provided by humans to free-ranging marine mammals also poses a health risk. Feeding wild marine mammals is an unnecessary and artificial manipulation of a species which carries with it potential risk."

Classification

NMFS prepared an environmental assessment for this rulemaking and concluded that there will be no significant impact on the human environment as a result of this rule.

The Under Secretary for Oceans and Atmosphere, NOAA, determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order (E.O.) 12291. The proposed regulations are not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or government agencies; or (3) significant adverse effects on competition, employment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities since the regulations do not prohibit cruises or other activities involving the observation of marine mammals. As a result, a regulatory flexibility analysis was not prepared.

This rule does not contain collection-of-information requirements subject to the Paperwork Reduction Act. This rule does not contain policies with federalism implications sufficient to warrant preparing a federalism assessment under E.O. 12612.

References

Gales, N.J. 1980. Report to the Monkey Mia Reserve Management Committee: Recommendations for a Feeding Strategy for the Dolphins of Monkey Mia, Shark Bay, Australia. Report submitted to the Marine Mammal Commission, Washington, DC.

Marks, Nancy, 1990. Division of Refuges, U.S. Fish and Wildlife Service, Dept. of the Interior. Personal comment to Margaret Lorenz, NMFS.

Overstrom, Neal, A., Arthur D. Goren and H.W. Kaufman, 1987. A Resident Belukha Whale in Long Island Sound in Proceedings of the Second Marine Mammal Stranding Workshop, Miami, FL. A NMFS Technical Report In Press. pp. 358–378.

Wells, R.S., Irvine, A.B. and Scott, M.D. 1980. The Social Ecology of Inshore Odontocetes. In Herman, L.M., Cetacean Behavior Mechanisms and Functions. John Wiley and Sons, New York.

Wilkinson, Dean M. 1990. Public Health and Welfare. In Draft Report—Program Review of the Marine Mammal Stranding Network. NMFS, Silver Spring, MD. pp. 57–65.

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Imports, Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

Dated: March 14, 1991.

William W. Fox, Jr.,

Assistant Administrator for Fisheries.

For reasons set forth in the preamble, 50 CFR part 216 is amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. In § 216.3, a new definition of "feeding" is added in alphabetical order, and the definition of "take" is revised to read as follows:

§ 216.3 Definitions.

* * * * *

Feeding is offering, giving, or attempting to give food or non-food items to marine mammals in the wild. It includes operating a vessel or providing other platforms from which feeding is conducted or supported. It does not include the routine discard of bycatch during fishing operations or the routine discharge of waste or fish byproducts from fish processing plants or other platforms if the discharge is otherwise legal and is incidental to operation of the activity.

* * * * *

Take means to harass, hunt, capture, collect, or kill, or attempt to harass, hunt, capture, collect, or kill any marine mammal. This includes, without limitation, any of the following: The collection of dead animals, or parts thereof; the restraint or detention of a marine mammal, no matter how temporary; tagging a marine mammal; the negligent or intentional operation of an aircraft or vessel, or the doing of any other negligent or intentional act which results in disturbing or molesting a marine mammal; and feeding or attempting to feed a marine mammal in the wild.

* * * * *

[FR Doc. 91–6594 Filed 3–19–91; 8:45 am]

BILLING CODE 3510–22–M

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50 CFR Part 675

[Docket No. 901199–1021]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure to directed fishing in the Bering Sea subarea.

SUMMARY: The Director, Alaska Region, NMFS (Director), has determined that the primary apportionment of halibut for the domestic annual processing (DAP) rock sole fishery will soon be reached. Therefore, the Secretary of Commerce is prohibiting directed fishing for rock sole in Zones 1 and 2H of the Bering Sea subarea. This action is necessary to prevent the primary apportionment of halibut to the rock sole fishery from being exceeded before the end of the fishing year. The intent of this action is to ensure optimum use of groundfish while conserving Pacific halibut stocks.

DATES: Effective: 12 noon, Alaska local time (A.l.t.), March 15, 1991, through 24:00, December 31, 1991.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) governs the groundfish fishery in the exclusive economic zone within the Bering Sea and Aleutian Islands Management Area (BSAI) under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council and is implemented by regulations appearing at 50 CFR 611.93 and parts 620 and 675.

The final rule for Amendment 16 to the FMP (56 FR 2700, January 24, 1991) established prohibited species catch (PSC) limits for Pacific halibut throughout the BSAI area. The limits are further apportioned under the authority of § 675.21(b)(1) into PSC allowances that are assigned to specified trawl fisheries. The final notice of specifications of groundfish for the BSAI for 1991 (56 FR 6290, February 15, 1991) established the primary Pacific halibut allowance for the rock sole fishery at 908 metric tons (mt).

Under § 675.21(c)(1)(iii), if the Director determines that U.S. fishing vessels using trawl gear will catch the seasonal apportionment of the primary PSC allowance of Pacific halibut in the Bering Sea and Aleutian Islands Management Area while participating in the rock sole fishery, the Secretary will publish a notice in the **Federal Register** closing Zones 1 and 2H for the remainder of the fishing year to vessels engaged in directed fishing for rock sole.

The Director has determined that the primary PSC allowance of Pacific halibut for the rock sole fishery will be reached on March 15, 1991. In accordance with § 675.21(c)(1)(iii) the Secretary of Commerce is prohibiting directed fishing for rock sole in Zones 1 and 2H of the Bering Sea subarea from 12 noon, A.l.t., March 15, 1991, through 24:00, December 31, 1991. For vessels fishing with trawl gear during any weekly reporting period in these areas, the retained catch of rock sole must comprise less than 20 percent of the total amount of groundfish or groundfish products retained, calculated in round weight equivalents (§ 675.21(b)(4)(ii)).

Classifiction

This action is taken under § 675.21 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 15, 1991.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91–6608 Filed 3–15–91; 12:38 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 56, No. 54
Wednesday, March 20, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 925

[Docket No. FV-91-256]

California Desert Grapes; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 925 for the 1991 fiscal period. Authorization of this budget would permit the California Desert Grape Administrative Committee (committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Comments must be received by April 1, 1991.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit an Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456, telephone 202-447-2020.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement and Order No. 925 [7 CFR part 925], regulating the handling of grapes grown in a designated area of southeastern California. The marketing agreement and order are affective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California desert grapes under this marketing order, and approximately 90 producers. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of grape producers and handlers may be classified as small entities.

The budget of expenses for the 1991 fiscal period was prepared by the California Desert Grape Administrative Committee (committee), the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of California desert grapes. They are familiar with the committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in public meetings. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of California desert grapes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the committee's expenses.

The committee met on February 14, 1991, and unanimously recommended a 1991 budget of $28,645, $820 more than the previous year. Increases in rent and utilities would be partially offset by decreases in salaries. The committee also unanimously recommended an assessment rate of $0.0025 per lug of grapes, a decrease from last season's rate of $0.003. This rate, when applied to anticipated shipments of 8,000,000 lugs, would yield $20,000 in assessment income. This, along with $1,151 in interest income and $7,494 from the committee's authorized reserve, would be adequate to cover budgeted expenses. The committee recommended utilizing the carryover funds from the 1990 fiscal period to cover part of the 1991 expenses. Funds remaining at the end of the 1991 fiscal period, estimated at $22,855, would be within the maximum permitted by the order of one fiscal period's expenses.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1991 fiscal period for the program began on January 1, 1991, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable grapes handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, it is found and determined that a comment period of 10 days is appropriate because the budget and assessment rate approval for this program needs to be expedited.

List of Subjects in 7 CFR Part 925

Marketing agreements, Grapes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 925 be amended as follows:

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

1. The authority citation for 7 CFR part 925 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 925.210 is added to read as follows:

§ 925.210 Expenses and assessment rate.

Expenses of $28,645 by the California Desert Grape Administrative Committee are authorized, and an assessment rate of $0.0025 per 22-pound container of grapes is established for the fiscal period ending December 31, 1991. Unexpended funds may be carried over as a reserve.

Dated: March 14, 1991.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–6521 Filed 3–19–91; 8:45 am]

BILLING CODE 3410–02–M

Rural Electrification Administration

7 CFR Part 1710

RIN 0572–AA43

Borrower Eligibility for Different Types of Loans; Correction

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule, correction.

SUMMARY: On February 20, 1991, at 56 FR 6912, The Rural Electrification Administration (REA) published a proposed rule to add a new part 1710, General and Pre-Loan Policies and Procedures Common to Insured and Guaranteed Electric Loans; Subpart A, General, consisting of section 1710.2, Definitions and Rules of Construction; and subpart C, Loan Purposes and Basic Policies, consisting of section 1710.102, Borrower Eligibility for Different Types of Loans. Through a typographical error, cross references in paragraph 1710.102(e)(4)(ix) were incorrectly stated. The correct cross references appear below. This correction does not affect the public comment period announced for the proposed rule.

FOR FURTHER INFORMATION CONTACT: Frank W. Bennett, Deputy Assistant Administrator-Electric, Rural Electrification Administration, room 4048–S, 14th St. and Independence Ave., SW., Washington, DC 20250–1500, Telephone (202)382–9547.

The following correction is made to 7 CFR part 1710, a proposed rule published in the **Federal Register** on February 20, 1991 at 56 FR 6912:

On page 6931, second column, in § 1710.102(e)(4)(ix), change the references "(e)(4)(i) and (ii)", "(e)(4)(iv) through (viii)", and "(e)(4)(iii)" to read "(e)(2)(i) and (ii)", "(e)(2)(iv) through (viii)", and "(e)(2)(iii)", respectively.

Dated: March 13, 1991.

Roland R. Vautour,

Under Secretary for Small Community and Rural Development.

[FR Doc. 91–6488 Filed 3–19–91; 8:45 am]

BILLING CODE 3410–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–NM–20–AD]

Airworthiness Directives; British Aerospace Viscount Model 744 and 745D Series Airplanes (Post Modification D2267, Part B), and Model 810 Series Airpianes (Post Modification FG611, Part B)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain British Aerospace Viscount Model 744 and 745D series airplanes (Post Modification D2267, part B), and Model 810 series airplanes (Post Modification FG611, part B), which would require a one-time inspection to detect incorrectly manufactured upper break-joint shear pins, and replacement, if necessary. This proposal is prompted by a report that a batch of incorrectly machined pins may have been fitted into certain Model 744, 745D, and 810 series airplanes. This condition, if not corrected, could result in reduced structural integrity of the wings.

DATES: Comments must be received no later than May 13, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 91–NM–20–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041–0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM–113; telephone (206) 227–2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91–NM–20–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain British Aerospace Viscount Model 744 and 745D series airplanes (Post Modification D2267, part B), and Model 810 series airplanes (Post

Modification FG611, part B). There has been a report that a batch of incorrectly machined upper break-joint shear pins may have been installed in certain Model 744, 745D, and 810 series airplanes. These pins were machined approximately 0.25 inch too short. This condition, if not corrected, could result in reduced structural integrity of the wings.

British Aerospace has issued Preliminary Technical Leaflet (PTL) No. 322, Issue 1, and PTL No. 191, Issue 1, both dated November 2, 1989, which describe procedures for a one-time visual inspection to detect incorrectly manufactured upper break-joint shear pins, and replacement, if necessary. The United Kingdom CAA has classified these PTLs as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require a one-time visual inspection to detect incorrectly manufactured upper break-joint shear pins, and replacement, if necessary, in accordance with the PTL's previously described.

It is estimated that 29 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,320.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Applies to Viscount Model 744 and 745D series airplanes (Post Modification D2267, part B), and Model 810 series airplanes (Post Modification FG611, part B), certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent reduced structural integrity of the wings, accomplish the following:

A. Within 200 hours time-in-service or within 90 days after the effective date of this AD, whichever occurs first, inspect the upper break-joint for an incorrectly manufactured shear pin, Part No. 80203–3009, in accordance with Preliminary Technical Leaflet (PTL) No. 322, Issue 1 (for the Model 700 series airplanes), and PTL No. 191, Issue 1 (for the Model 810 series airplanes), both dated November 2, 1989. If damaged components or unserviceable short pins are found, prior to further flight, replace with serviceable parts in accordance with the appropriate PTL.

B. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041–0414. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on March 12, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–6580– Filed 3–19–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–NM–10–AD]

Airworthiness Directives; Gulfstream Model G–IV Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Gulfstream Model G–IV series airplanes, which would require replacement of defective Honeywell PZ–880 Performance Computers, and a revision to the Limitations Section of the FAA-approved Airplane Flight Manual. This proposal is prompted by reports of a failure condition which resulted in the use of uncertified reduced thrust climb data. This condition, if not corrected, could result in an automatic reduction of power 400 feet above ground level following takeoff, which could cause a lower than expected climb profile.

DATES: Comments must be received no later than May 10, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 91–NM–10–AD, 1601 Lind Avenue S.W., Renton, Washington 98055–4056. The applicable service information may be obtained from Gulfstream Aerospace Corporation, Travis Field P.O. Box 2206, Savannah, Georgia 31402–2206. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue S.W., Renton, Washington, or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: James H. Williams, Systems Branch, ACE–130A; telephone (404) 991–3020. Mailing address: FAA, Small Airplane Directorate, Atlanta Aircraft

Certification Office, ACE–115A, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349.

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/ public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91–NM–10–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

Gulfstream has recently reported that a software error exists which will allow uncertified software to drive the autothrottles. This software would automatically reduce the engine thrust at 400 feet above the runway to a level that has not been certified to meet the regulatory takeoff performance requirements. The improper configuration is identifiable by loss of default entries on the PERF INIT page, and by the display of a reduced climb power engine pressure ratio (EPR) rating (CLB–R) on the display controllers on the ground and annunciated on the engine indication and crew alerting system (EICAS) between the EPR displays in flight. The failure is caused by a power interrupt occurring during the start up sequence of the system. Once the error has occurred, the problem can only be repaired by removal and repair of the performance computers at an approved maintenance facility. This condition, if not corrected, could result in an automatic reduction of power at 400 feet above ground level following takeoff, which could cause a lower than expected climb profile.

The FAA has reviewed and approved Gulfstream G–IV Aircraft Service Change Number 200, dated September 21, 1990, which describes procedures for removal of the defective Honeywell PZ–830 Performance Computers, and replacement with modified performance computers. Gulfstream has also issued Gulfstream Aerospace G–IV Flight Manual Interim Revision No. 2 of the Aircraft Flight Manual Supplement Number GIV–89–03, which revises operating procedures while taxiing, adds limitions for alignment procedures, and revises software program information.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require removal of defective performance computers and replacement with modified units, and a revision to the Limitations Section of the Airplane Flight Manual, in accordance with the service bulletin previously described.

There are approximately 149 Model G–IV series airplanes of the affected design in the worldwide fleet. It is estimated that 130 airplanes of U.S. registry would be affected by this AD, that it would take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The required parts will be supplied to the operators at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $20,800.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Gulfstream: Applies to Model G–IV series airplanes, Serial Numbers 1000 through 1148, certificated in any category. Compliance is required within 180 days after the effective date of this AD, unless previously accomplished. To prevent unsafe reduction in engine power following takeoff, accomplish the following:

A. Replace Honeywell Performance Computers identified as part number 7004609–905 with computers identified with part number 7004609–906 in accordance with Gulfstream Aerospace Aircraft Service Change Number 200, dated September 21, 1990.

B. Revise the Limitations Section in the FAA-approved Airplane Flight Manual (AFM) by including a copy of Gulfstream Aerospace G–IV Flight Manual Interim Revision No. 2 of Aircraft Flight Manual Supplement Number GIV–89–03.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Atlanta Aircraft Certification Office (ACO), ACE–115A, FAA, Small Airplane Directorate.

Note: The request should submitted directly to the Manager, Atlanta ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Atlanta ACO.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Gulfstream Aerospace Corporation, Travis Field P.O. Box 2206, Savannah, Georgia 31402–2206. These documents may be examined at the FAA, Northwest Mountain

Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia.

Issued in Renton, Washington, on March 11, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-6579 Filed 3-19-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-44-AD]

Airworthiness Directives; British Aerospace Model HS.125-600A and BH.125-600A Series Airplane (Post Modification 252475) and Model HS.125-700A Series Airplanes (Post Modification 252509)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain British Aerospace Model HS.125-600A, BH. 125-600A and HS.125-700A series airplanes, which would require the installation of a cover above the standby inverter "TF" located between frames 22 and 23. This proposal is prompted by reports of contamination of the standby inverter due to the accumulation of condensation. This condition, if not corrected, could result in loss of the standby constant frequency power system which provides the necessary back-up capability when the primary power system fails.

DATES: Comments must be received no later than May 13, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-44-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from British Aerospace, PLC, librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such writing data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-44-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The United Kingdom Civil Aviation Authority (CAA), in accordance with the existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain British Aerospace Model HS.125-600A and BH.125-600A series airplanes (Post Modification 252475) and on certain Model HS.125-700A series airplanes (Post Modification 252509). There have been recent reports of contamination of the standby inverter on these models due to condensation. This condition, if not corrected, could result in loss of the constant frequency power system which provides necessary back-up capability when the primary power system fails.

British Aerospace has issued Service Bulletin 24-279-3255A, dated November 16, 1990, which describes procedures to install a partial cover above the standby inverter "TF" located between frames 22 and 23 LH, if the inverter is installed in a certain configuration. The United Kingdom CAA has classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require the installation of a partial cover above the standby inverter "TF" located between frames 22 and 23 LH in accordance with the service bulletin previously described.

It is estimated that 154 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The estimated cost for required parts is $625 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $108,570.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Applies to Model HS.125–600A and BH.125–600A series airplanes (Post Modification 252475) and Model HS.125-700A series airplanes (Post Modification 252509); as listed in British Aerospace Service Bulletin 24–279–3255A, dated November 16, 1990; certificated in any category. Compliance is required within 160 days after the effective date of this AD, unless previously accomplished.

To prevent loss of the standby constant frequency power system which provides the necessary back-up capability when the primary power system fails, accomplish the following:

A. Install a partial cover above the standby inverter "TF" located between frames 22 and 23 LH if the converter is installed as depicted on pages 5–6 of the service bulletin, in accordance with British Aerospace Service Bulletin 24–279–3255A, dated November 16, 1990.

B. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on March 12, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–6582 Filed 3–19–91; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 91–NM–51–AD]

Airworthiness Directives; Aerospatiale Model SN 601 Corvette Series Airplanes With Modification 1390

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Aerospatiale Model SN 601 Corvette series airplanes, which would require replacement of the fuel heater thermostatic element. This proposal is prompted by reports that the existing thermostat does not provide adequate fuel icing protection. This condition, if not corrected, could result in ice formation in the fuel line and subsequent loss of engine power.

DATES: Comments must be received no later than May 13, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 91–NM–51–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Woodford Boyce, Standardization Branch, ANM–113; telephone (206) 227–2137. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91–NM–51–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Aerospatiale Model SN 601 Corvette series airplanes with modification 1390. There has been a recent report that the existing fuel heater thermostat does not provide adequate fuel icing protection. This condition, if not corrected, could result in ice formation in the fuel line and subsequent loss of engine power.

Aerospatiale has issued Corvette Service Bulletin 73–3, Revision 1, dated July 30, 1990, which describes procedures for replacing the existing fuel heater themostatic element. The French DGAC has classified this service bulletin as mandatory, and has issued French Airworthiness Directive 90–115–008(B) addressing this subject.

This airplane model is manufactured in France and type certified in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require replacement of the fuel heater themostatic element in accordance with the service bulletin previously described.

It is estimated that 1 airplane of U.S. registry would be affected by this AD, that it would take approximately 3 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The required parts will be supplied by the manufacturer to the operators at no cost. Based on these figures, the total

cost impact of the AD on U.S. operators is estimated to be $120.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation Safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aerospatiale: Applies to Model SN 601 Corvette series airplanes, which have incorporated Modification 1390, certified in any category. Compliance is required within 100 landings after the effective date of this AD, unless previously accomplished.

To prevent ice formation in the fuel line and subsequent loss of engine power, accomplish the following:

A. Remove the existing thermostatic element, part number 9914, and install thermostatic element part Number 5497–1, in accordance with Aerospatiale Corvette Service Bulletin 73–3, Revision 1, dated July 30, 1990.

B. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. These documents may be examined at the FAA, Nothwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on March 12, 1991.

Darrel M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–6581 Filed 3–19–91; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF LABOR

Employment and Training Administration

Employment Standards Administration Wage and Hour Division

20 CFR 655

Alien Temporary Employment Labor Certification Process

AGENCIES: Employment and Training Administration, Labor; Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The purposes of this Notice are as follows: (a) To announce the Department of Labor's general approach and timetable for implementing its responsibilities under the Immigration Act of 1990, including identifying key products and the proposed schedule for their development; (b) to summarize those provisions of the Immigration Act of 1990 applicable to the Department of Labor (Department or DOL); (c) to set forth the general principles which will guide the development of regulations to implement the Department's responsibilities under the Act; and (d) to raise issues and questions about which the Department invites public comment in advance of the proposed rules. In addition, the Department welcomes comments on any other matter pertinent to its implementation of the Act. Any interested party is invited and encouraged to participate in this open process and provide input to the Department through a meeting and/or written comments.

This new legislation creates major new responsibilities for the Department of Labor in the areas of both immigrant (permanent) and nonimmigrant (temporary) employment-based immigration and entry. The Immigration Act of 1990 represents a major shift in U.S. immigration policy. With respect to permanent immigration, the Act retains family reunification as a major objective but attempts to achieve a better balance between family reunification and employment-based immigration, for the purpose of making immigration policy more responsive to labor markets needs while continuing to protect the interests of U.S. workers. As a result, the new law will significantly increase the total number of visas available for permanent immigration, with most of this increase allocated to higher skilled employment-based immigrants. With respect to nonimmigrants, the Act continues to allow employers to quickly obtain temporary workers when needed, but seeks to balance that needed flexibility with increased protection for U.S. workers in several temporary employment-based categories.

DATES: Comments on this Notice are invited and will be fully considered as part of the Department's various rulemakings pursuant to this legislation. Comments on this Notice shall be submitted to the Department no later than April 19, 1991. Comments received by this date will be used in developing proposed regulations which will be published in the **Federal Register** at later dates. An exception to this will be the proposed regulations for alien crewmembers performing longshore work which are scheduled to be published on April 5, 1991. As they regard alien crewmembers, comments received to this Notice along with responses received to the proposed regulations will be considered in developing the Interim Final Regulations.

ADDRESS: Submit comments to: Roberts T. Jones, Assistant Secretary, Employment and Training Administration, Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; Attention: Immigration Task Force Room N–4470.

FOR FURTHER INFORMATION CONTACT: David O. Williams, Immigration Task

Force. Telephone: (202) 535–0174 (this is not a toll-free number).

SUPPLEMENTAL INFORMATION: The Immigration Act of 1990, Public Law 101–649, 104 Stat. 4978 (November 29, 1990), amends the Immigration and Nationality Act (8 U.S.C. 1101 *et seq.*) (INA) and assigns and modifies the Department of Labor's responsibilities for implementing major provisions of the Act relating to both immigrants and nonimmigrants. In seeking comments to this Notice, respondents are asked to give particular focus to the statutory language of the Act and how it should be interpreted by the Department.

Relevant agencies within the Department will be responsible for reviewing all comments and recommendations that are submitted by the public in response to this Notice in accordance with rules governing the development of regulations, and for making recommendations to the Secretary on the provisions and requirements of the regulations implementing the Department's responsibilities under the new Act. In this context the relevant DOL agencies are: the Employment and Training Administration (ETA), Employment Standards Administration (ESA), Bureau of International Labor Affairs (ILAB), Office of the Assistant Secretary for Policy (ASP), Office of the Solicitor (SOL), Women's Bureau (WB), and the Office of Congressional and Intergovernmental Affairs (OCIA). In addition, there will be on-going consultation with the Departments of State and Justice, especially the Immigration and Naturalization Service, in order to obtain their views on the contents of the regulations and to insure consistency with and mutual understanding of all regulations and procedures necessary to implement the Immigration Act of 1990.

General Approach

The Department intends to implement its responsibilities under the Act in an open manner and to solicit the participation of all interested parties through requests for comments, public meetings, and the dissemination of information via the **Federal Register**. The Department intends to publish this Notice and two sets of proposed regulations for the new law at the earliest possible time. The Department invites comments from all interested parties on these publications. Since the law established tight implementation deadlines, it is critical that all comment due dates are met. Likewise, the agenda for any meeting will be limited to DOL's responsibilities to implement the Act.

Development of Regulations

The Department invites comment on the contents of this Notice and on any and all issues relevant to DOL's implementation of its responsibilities under the Act. Following a thirty day comment period on this Noitice, the Department will develop Proposed Regulations that will also be published in the **Federal Register** for comment. Except for the proposed rule on performance of longshore work by alien crewmembers (D-visas), the projected date for this publication is late May 1991 with Final (or Interim Final) Regulations scheduled for publication on or before Septetmber 1, 1991.

The development of implementing regulations will reflect the Department's regulatory policy to follow the statutory language as closely as possible where it is clear and explicit, or where the intent is clear from the legislative history. However, to assure effective implementation, more detailed clarification and explanation of specific provisions may be provided where necessary.

As noted, regulations on alien crewmembers (D-visas) performing longshore work are an exception to the timetable. Because this amendment has an effective date of May 28, 1991, the proposed longshore regulations are scheduled to be published on April 5, 1991, followed by Final (or Interim Final) Regulations on May 24, 1991.

In order to meet the above statutory deadlines, the department will implement its responsibilities under the Immigration Act of 1990 according to the following schedule:

Date, Product, or Event

From now to 10/1/91, the Department will engage in an ongoing consultative process with interested parties through public statements and Proposed Regulations in the **Federal Register** regarding the processes and procedures that will be used to implement the Department's responsibilities under the Act. The following is a proposed timetable for publishing Proposed and (Interim Final) Regulations. Comments on this proposed schedule are also welcome.

11/29/90—Enactment of Public Law 101–649.

This **Federal Register** notice announcing the Department's proposed implementation approach and schedule, and containing a summary of the act, guiding principles, and significant issues and/or questions relating to implementing the act. (Comments to be due thirty days from the date of this publication).

3/27/91—Letter sent to each governor from Secretary Martin advising them of expanded State responsibilities under the new immigration law.

4/5/91—Proposed Regulations published in **Federal Register** oin alien crewmembers (under D visas) on foreign vessels performing longshore work at U.S. ports.

4/22/91—Comments due on 4/5/91 proposed regulations on alien crewmembers performing longshore work (D-visa).

5/24/91—Proposed Regulations published in the **Federal Register** on all areas other than alien crewmembers performing longshore work (D-visa).

5/24/91—Final or (Interim Final) Regulations on alien crewmembers performing longshore work (D-visa) published in the **Federal Register**.

5/28/91—Alien crewmembers performing longshore work Regulations become effective.

6/24/91—Comments due on 5/24/91 proposed regulations for all provisions other than those for alien crewmembers performing longshore work (D-visa).

9/01/91—Final (or Interim Final) Regulations for all programs and provisions other than alien crewmembers published in the **Federal Register**.

10/1/91—Effective date for all programs and provisions other than the longshore regulations which will be published earlier as noted above.

Principles to Guide the Development of the Regulations and Implementation Procedures

The Immigration Act of 1990 creates major new responsibilities for the Department of Labor which will affect certain categories of both immigrants and nonimmigrants. The changes will also significantly influence the way in which the Department administers its responsibilities in the immigration area. These responsibilities are outlined in subsequent sections of this Notice. The Department believes that the Development of its regulations and the evaluation of the comments it receives should be guided by a set of general principles. These general principles have been formulated following a review of the Act and its legislative history. The Department invites comments on these principles as well as any other topic discussed in this Notice.

1. *Intent of the Act.* The Department believes that the broad intent of the Act is clear. The Act retains family reunification as the major objective of permanent immigration but also seeks to make the immigration system more efficient and responsive to the needs of

employers experiencing labor shortages, while at the same time providing greater safeguards and protections for both U.S. and alien workers. To better meet the needs of employers, the Act:(1) Substantially increases employment-based permanent immigration; (2) reserves most of these visas for alien workers with higher skills; and,(3) changes restrictions on the employment of foreign students in off-campus jobs. The clear intent, however, is to balance such changes with greater protections for U.S. workers, including: (1) New provisions requiring employers to give advance notice to employees of their intent to hire alien workers; (2) the creation of new attestation-like processes for several categories of nonimmigrants; and (3) the establishment of numerical caps on two categories of nonimmigrants where Congress believes adequate numbers of U.S. workers are available. Where it has responsibility, the Department intends to develop regulations that achieve the dual intent of facilitating the entry of certain immigrants and nonimmigrants to meet labor needs, while simultaneously protecting the opportunities of U.S. workers to participate fully and fairly in our nation's overall economic prosperity.

2. *Test New Methods.* The Act authorizes a three-year pilot program to test the use of generalized labor market information regarding shortage or surplus occupations as an alternative to the present case-by-case labor certification process for alien workers. The Department intends to explore alternative methods to streamline the current process for certifying immigrants for employment which can be cumbersome and lengthy.

3. *Enforcement of Attestation-Like Provisions.* The Act creates new protections for U.S. workers in three nonimmigrant categories of alien workers by requiring employers to file a statement regarding prevailing wages, working conditions, and/or practices. Although these are new requirements for employers who employ temporary alien workers in these categories, it is important to note that this attestation-like process will be less burdensome than the labor certification process used in the permanent program. The Department intends to implement these new requirements in a manner which will protect U.S. wages, working conditions, and/or employment opportunities, while facilitating employers' ability to utilize alien temporary workers. The Department recognizes that the approval of several categories of nonimmigrant aliens to work temporarily in the U.S. will be based on its acceptance of statements or attestations made by employers. The Department believes that such statements should generally be accepted. To provide adequate protection for U.S. workers, the Department further believes that the new attestation-like procedures must provide sufficient specificity so that employers can be held publicly accountable for their actions. The Department intends to take its enforcement responsibilities seriously, and to carry out all of its statutory obligations firmly and fairly in accordance with the law. In instances of suspected misrepresentation or failure to perform obligations, the Act provides for the filing of complaints by parties who believe that such a misrepresentation or failure has occurred. These provisions are designed to protect both U.S. workers and alien workers by insuring that the wages and benefits they receive, and the hours they work, are as stipulated by employers. (Note: Other enforcement requirements under the permanent and temporary labor certification programs remain unchanged by the new Act. Under those programs, suspected instances of misrepresentation are referred to INS and to the Department's Office of Inspector General for appropriate investigation.)

4. *Scope of Regulations.* Clear statutory language ultimately reflects the desire of Congress. In drafting its implementing regulations the Department will follow the statutory language as closely as possible where it is clear and explicit; where it is not, the Department will look to the legislative history and to the overall purposes and intent of the Act for guidance.

5. *Open Process for Developing Regulations.* The Department is aware that during the development of the new Act there were many concerns about how implementing agencies might interpret the statute. Consequently, the Department wishes to make all interested parties aware of its intent to rely on an open approach in developing its regulations so that they will have adequate opportunity to make their views known and provide recommendations at each step of the process. With the publication of this Notice, the Department sets forth the general philosophy and approach it intends to use in developing its regulations to implement the Act. The Department believes that developing these regulations in an open manner provides an opportunity for employers, workers, and their representatives, as well as the general public, to provide recommendations on how the statute should be implemented.

6. *Streamlined Procedures to Minimize Paperwork and Delays.* The Department recognizes that some dissatisfaction exists with complex and time-consuming processes that have contributed to delays and backlogs which have impeded the ability of employers to obtain needed workers within reasonable time limits. The Department is committed to fulfilling in as expeditious a manner as possible the dual objectives of providing foreign workers to meet labor needs, while simultaneously protecting the interests of U.S. workers. The Department intends to limit paperwork and procedural requirements to those necessary to provide for the protection of U.S. workers consistent with the Act.

7. *Transition.* The Department recognizes that a multitude of applications and petitions initiated under current regulations pursuant to the INA prior to the enactment of the 1990 Immigration Act will still be in some stage of processing at the tme the new regulations take effect. A great deal of effort has already been expended by employers, attorneys and State and Federal governments alike on these "pipeline" applications and petitions. To minimize the potential for systemwide disruption, the Department intends to work closely with the Department of State and the Immigration and Naturalization Service to insure that, unless otherwise mandated by the Act, the new regulations apply only to new applications filed after the provisions of the Act take effect. This approach would avoid duplicating actions which have already been taken on applications and petitions in process. (See Immigration Act of 1990 sections 161(a) and (c)(1)(B), 231 and 601(e)(2).)

Summary of the Act, Issues and Questions

A summary of the provisions of the Act which give responsibility to the Department is provided below. Following each summary, the Department discusses examples of issues and questions on which public comment is desired. The list of issues provided at the end of each subsection is intended to be illustrative rather than exhaustive.

Section I. Permanent Employment-Based Immigration

The new Act authorizes an increase in the number of employment-based immigrants from 54,000 to 140,000 annually beginning October 1, 1991. The

Act establishes five Preference Groups of employment-based immigration: (1) Priority Workers; (2) Professionals with Advanced Degrees and Aliens of Exceptional Ability; (3) Skilled Workers, Professionals and Other Workers; (4) Special Immigrants; and (5) Employment Creation. 8 U.S.C. 1153(b)(1)–(5). The Department has responsibility in three of these categories. They are Preference Groups 2, 3 and 5.

A. The Labor Certification Process Briefly Described

Generally, an individual labor certification from the Department is required for employers wishing to employ an alien under Preference Groups 2 and 3. In issuing such certifications, DOL applies two basic standards to exclude an alien: (1) If U.S. workers are able, willing, qualified and available for the position; and/or (2) if the employment of an alien will adversely affect the wages or working conditions of U.S. workers similarly employed.

In brief, the current process for obtaining a labor certification requires employers to actively recruit U.S. workers in good faith for a period of at least thirty days for the job openings for which aliens are sought. The employers' job requirements must be reasonable and realistic, and employers must offer prevailing wages and working conditions for the occupation. The employers may not favor aliens or tailor the job requirements to the aliens' qualifications.

During the thirty-day recruitment period, employers are required to place a three-day, help-wanted advertisement in a newspaper of general circulation, or a one-day advertisement in a professional, trade or business journal, or ethnic publication. Employers are also required to place a thirty-day job order with the local office of the State employment service. If employers believe they have already conducted adequate recruitment, they may ask the Department to waive the mandatory, thirty-day recruitment. If the employer does not request a waiver of recruitment or if the waiver request is denied, the help-wanted advertisements which are placed in conjunction with the mandatory thirty-day recruitment direct job applicants to either report in person to the employment service or to submit resumes to the employmebnt service.

The job applicants are then referred to the employer or their resumes are sent. The employer then has forty-five days to report to the employment service the job-related reasons for not hiring any U.S. worker referred. If the employer hires a U.S. worker for the job opening, the process stops at that point, unless the employer has more than one opening. If, however, the employer believes that qualified, willing and able U.S. workers are not available to take the job, the application together with the documentation of the recruitment results and prevailing wage information are sent to the regional office of DOL. There, it is reviewed and a determination is made as to whether or not to issue the labor certification. See 20 CFR part 656; see also INA section 212(a)(14), as amended by the Immigration Act of 1990 sections 162(e)(1) and 601(a).

B. Professionals Holding Advanced Degrees and Aliens of Exceptional Ability in Sciences, Arts or Business (Preference Group 2)

This cateogry includes immigrants who are members of the professions holding advanced degrees or their equivalent or who, because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultrual or educational interests, or welfare of the United States and whose services in the sciences, arts, professions, or business are sought by an employer in the United States. Up to 40,000 visas may be issued to persons in this category, plus any unused visas from Preference Group 1 (Priority Workers). A labor certification is required unless the Attorney General waives the requirement of a job offer when doing so is deemed to be in the national interest. INA section 203(b)(2), as amended by the Immigration Act of 1990 121(b)(2).

Issues and/or Questions. Currently, the Immigration and Naturalization Service (INS) is responsible for determining in which preference catetgory an alien is qualified. This approach has functioned satisfactorily in the past. To continue this approach means that INS will decide whether an alien is an immigrant of Extraordinary Ability (i.e., Priority Worker, Preference Group 1), Exceptional Ability (i.e., Preference Group 2), or a Professional (i.e., Preference Group 3), etc. Therefore, the Department's responsibility under Preference Groups 2 and 3 will be to determine whether a labor certification should be issued to an employer after the employer has made application to the Department for one. The Department seeks comments on this division of responsibility and whether changes are desirable. The Department also invites comments on any other matter relevant to its responsibilities under this section of the Act.

C. Skilled Workers, Professionals, and Other Workers (Preference Group 3)

Skilled workers are qualified aliens who are capable, at the time of petitioning, of performing skilled labor requiring at least 2 years training or experience, not of a temporary or seasonal nature. Professionals are qualified workers who hold baccalaureate degrees or possess equivalewnt experience and who are members of the professions. Up to 40,000 visas may be issued to persons in this category, plus any unused visas from Preference Groups 1 and 2. "Other Workers" are other qualified aliens who are capable at the time of petitioning of performing unskilled labor. No more than 10,000 visas will be issued to Other Workers on an annual basis. A labor certification from the Department is required. INA section 203(b)(3), as amended by the Immigration Act of 1990 section 121(a).

Issues and/or Questions. The INS is currently responsible under the INA and will continue to be responsible under the new Act for determining whether employment-based aliens qualify under the subcategory of Other Workers, and making the determination of what constitutes two years of training and experience.

Under current law, the Department interprets "capable at the time of petitioning" to mean that the alien is qualified for the position sought at the time the employer files an application for a labor certification with the local job service office. See INA section 203(b)(3)(A) (i) and (iii). Were this not the case, theoretically an employer could apply for a labor certification for a graduate engineer on behalf of an alien who had just begun college, test the labor market for a graduate engineer among current available U.S. workers, and then hold the labor certification for submission to INS until the alien obtained a graduate engineering degree by which time local labor market conditions may well have changed. The Department invites comments on the extent to which this interpretation should also apply under the new Act. The Department also invites comments on any other matters pertinent to its responsibilities under this section of the Act.

D. Employment creation (Preference Group 5)

Persons in this category are those who will invest the required amount of $1,000,000 in a new commercial enterprise that will employ at least 10 U.S. workers who are not family

members. The Act also provides that the minimum investment can range from one-half to three times the required amount, depending on the circumstances. If the new commercial enterprise will be established in a targeted area of high unemployment (i.e., having an average unemployment rate of 150% of the national average) or a rural area, the Attorney General may determine that a lesser amount may be invested but not less than half of the required amount. In addition, the Attorney General may increase the required investment amount by up to three times when the commercial enterprise will be located in an area of high employment. In addition, from time to time, the required level of $1,000,000 may be adjusted by the Attorney General, after consultation with the Secretaries of Labor and State. Up to 10,000 visas may be issued to persons in this category. Three thousand of these visas require employment creation investments in targeted areas.

Issues and/or Questions. The Department believes that it is the responsibility of the Attorney General to develop the regulations for this section, including the precise definitions of targeted areas. The Department also believes that it has no operational responsibility under this section with respect to approving individual applications submitted by investors. However, the Department does expect that the Attorney General will ask it to provide data on unemployment rates and consult with the Secretary on required investment amounts. INA section 205(b)(5), as amended by the Immigration Act of 1990 section 121(a).

The Department is aware that no definition for "high employment" currently exists and that unemployment data by specific geographic area are not currently available in a form that could be readily usable by potential investors seeking entry under this category. Possible sources of data within the Department are the Bureau of Labor Statistics Earnings and Employment Report, which provides unemployment rates for a limited number of geographic areas, and the Employment and Training Administration publication *Area Trends in Employment and Unemployment* which lists over 1,600 labor surplus areas. These areas, however, are defined as having an unemployment rate of 120% of the national average rather than 150% of the national average as specified in the Act. The Department invites comment on these data and on the related issues of how its Federally-funded employment and training programs in such targeted areas could be made aware of the employment opportunities that will be created. Training of U.S. workers in occupational areas where alien workers are needed and employed should be encouraged in job training programs. The Department also invites comment on any other issue(s) pertinent to its potential responsibilities under this section.

E. Section 122, Changes in Labor Certification Process

This section of the Act requires two changes in the permanent labor certification process: (1) Establishing a labor market information pilot program for a three year period to be used to select up to ten labor shortage or surplus occupations in lieu of individual, case-by-case labor certification determinations; and (2) establishing a requirement that employers notify their employees or an appropriate bargaining agent when they file a labor certification application, and permitting third parties to provide information on permanent labor certification applications.

Issues and/or Questions. In addition to changes mandated by the new Act, the Department is considering other changes to the regulations governing the issuance of permanent labor certifications at 20 CFR 656 which may be needed to improve this process or clarify ambiguities. Recommendations on the need for such changes and the specific changes recommended are desired along with a supporting explanation.

E(1). Section 122(a), Labor Market Information Pilot Program

This section of the Act requires the Department to test the use of labor market and other information as an alternative to the present case-by-case labor certification process under section 212(a)(5)(A) of the Immigration and Nationality Act. See also Immigration Act of 1990 sections 162(e)(1) and 601(a). This three-year pilot program will test the concept and develop procedures for selecting up to ten shortage and/or surplus occupations.

Issues and/or Questions. In conjunction with establishing this program, the Department invites comment on the following.

(a) Appropriate methodologies that might be used to determine the labor shortage and/or surplus occupations.

(b) Should the pilot program address both labor shortage and labor surplus occupations? If so, how should the occupations identified be divided between shortage and surplus and on what basis?

(c) Specific sources of data that might provide the best information on potential shortage/surplus occupations and their locations.

(d) The frequency with which the list of shorage and surplus occupations should be updated, and the method that should be used for doing so.

(e) The general principles to use in selecting the shortage/surplus occupations for the pilot program.

(f) The rationale for the degree of specificity that should be used to identify each listed occupation.

(g) Whether occupations currently on *Schedules A* (shortage occupations) and *B* (surplus occupations) should be considered for or automatically included in the pilot program. Should *Schedule A* be continued or eliminated during the pilot?

The Department also invites comment on any other matter relevant to its responsibiltiies udner this section.

E(2). Section 122(b), Notice

This section of the Act requires employers to notify the appropriate collective bargaining representative, if one exists of their having filed a labor certification application. The appropriate bargaining representative is the one who represents the employees in the occupational classification for which foreign workers are sought. If there is no collective bargaining representative, all employees must be notified through conspicuous posting in the employer's facility. Currently the posting of notice regulation at 20 CFR 656.21(b)(3) regards the employer's recruitment activity for the job opportunity.

The Act in this section also provides for the submission of documentary evidence by third parties to the Department bearing on the application such as the availability of qualified workers for the job(s) in question, wages and working conditions, and information about the employer's failure to meet terms and conditions of employment with respect to the employment of alien workers and co-workers.

Issues and/or Questions. The Department is seeking comments on the best way to provide for such notice. For example, options could include: amending the current posting of notice regulation at 20 CFR 656.21(b)(3) for the alien certification program; or instituting a new procedure for posting notice of the job opportunity such as requiring the employer to submit copies of the exchange of correspondence between itself and the bargaining representative.

The Department is also interested in public comments on any other matters relevant to its responsibilities under this section.

Section II. Nonimmigrants

The Act assigns the Department new responsibilities for three categories of nonimmigrants: D-Visa Crewmembers seeking to perform longshore work; H-1B Specialty Occupations; and Students on F-Visas seeking to work off-campus. In each of these categories employer statements or attestations are required to protect the wages and working conditions of U.S. workers from being adversely affected by the employment of nonimmigrants. The Act also provides for the filing of complaints and imposition of penalties for misrepresentation or failure to carry out the attested actions.

The Act also places an annual limitation of 66,000 on the number of Skilled and Unskilled Temporary Workers (H-2B) who may enter the U.S., but makes no other changes to this category. Although INS has the statutory responsibility for this program (INA sections 101(a)(15)(H)(ii)(b) and 214(c)), a labor certification from the Department is also required. See 20 CFR part 655, subpart A, 55 FR 50510 (December 6, 1990) (formerly at 20 CFR part 621 (1990)); and 8 CFR 214.2(h).

A. Section 203, Limitations on Performance of Longshore Work by Alien Crewmembers.

This section prohibits alien crewmembers on D-visas from performing longshore work except in five specific instances: (a) Those necessary for safety and environmental protection as determined by the Secretary of Transportation; (b) in situations where the ship's country of registration permits U.S. crewmembers to perform longshore work in that country's ports; (c) in those situations where an attestation has been filed with the Department which states: that the use of alien crewmembers to peform longshore work is permitted under the prevailing practice of the particular port, that the use of alien crewmen is not during a strike or lockout, that such use is not designated to influence the election of a collective bargaining representative, and that notice has been provided to longshore workers at the port; (d) where permitted by one or more collective bargaining agreements, each covering at a particular port; and (e) in certain instances involving automated self-unloading conveyor belts or vacuum-actuated systems.

The Department must also establish a process for the receipt, investigation, and disposition of complaint(s) (from any aggrieved party, person, or organization) respecting an employer's failure to meet, or misrepresentation of, an attestation element. The Department has 180 days to conduct an investigation and to determine whether an employer has failed to satisfy or has misrepresentated an attestation element. After such determination, an opportunity for a hearing within 60 days will be afforded to any interested party. After such opportunity for a hearing, the Department will issue a finding as to a violation, and if a violation is found, shall notify the Attorney General who shall not permit any vessels of the employer to enter any port of the United States during a period of up to one year. The Department may also impose a civil money penalty of up to $5,000 per worker, and/or not accept for one year the filing of a subsequent attestation for work at a specific port. Additionally, upon request by a complainant and after notice to the employer with an opportunity to respond within 14 days, the Secretary can issue cease and desist orders against the employer based on an initial determination that the complaining party's allegations are supported by a preponderance of the evidence.

Issues and/or Questions. The Department seeks comments on the following issues and any other matter pertinent to its responsibilities under this section:

(a) Under what circumstances should foreign crewmen be permitted to operate automated self-unloading conveyor belt or vacuum-actuated systems on a foreign vessel?

(b) What body should be responsible for determining the prevailing practice at a port?

(c) What criteria should be used to make that determination?

(d) What guidelines should be provided to employers for complying with the required notice provisions to longshore workers when there is no bargaining representative? What form and process should employers be required to use in giving this notice?

B. Section 205(c), Revision of the H–1B Visa Category

This section of the Act makes significant changes in the H–1B visa classification which pertains to an alien who is coming temporarily to the U.S. to perform services in a "Specialty Occupation" and meets the requirements for the occupation specified. "Specialty Occupation" means an occupation that requires: (1) The theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor's or higher degree in the specific speciality (or its equivalent); or, (2) full state licensure to practice, it if is required in the occupation, and completion of any degree required (or equivalent experience to the degree coupled with recognition of expertise through progressively responsible positions relating to the speciality). INA sections 101(a)(15)(H)(i)(b) and 212(n), amended by Immigration Act of 1990 sec. 205(c).

Section 205(a) amends INA section 214(g)(i)(A), to limit the number of visas that may be issued annually to 65,000, not including spouses and children. The Act also establishes an employer attestation-like process which requires employers to file a labor condition application provides for the filing of complaints, their disposition, and the imposition of fines and/or payment of back wages for violations.

The labor condition application must contain the following statements: (1) That the employer is offering or will offer the actual wage level for the occupational classification at the place of employment, or the prevailing wage level for the occupational classification in the area of employment, whichever is greater, determined as of the time of filing the application; (2) that the employer will provide working conditions for such aliens that will not adversely affect the working conditions of workers similarly employed; (3) that there is no strike or lockout in the course of a labor dispute in the occupational classification at the place of employment; and (4) that the employer, at the time of filing the application, has provided notice of the filing to the bargaining representative (if any) of the employer's employees in the occupational classification and area for which aliens are sought, or if there is no such bargaining representative, has posted notice of filing in conspicuous locations at the place of employment.

The expectation of Congress, as indicated in the H.R. Conference Report No. 101–955, October 26, 1990, page 122, is that the prevailing wage to which an employer must attest will be interpreted by the Department in a like manner as regulations currently guiding INA section 212(a)(14) (redesignated as INA section 212(a)(5)(A) by Immigration Act of 1990 section 601(a)). Those regulations, which can be found at 20 CFR 656.40, define the prevailing wage as the avearage of wages paid to workers similarly employed in the area of intended employment.

The labor condition application must also show the number of workers sought, the occupational classification in which the workers will be employed, and the wage rate and conditions under which the workers will be employed.

The employer must make available for public examination at the employer's principal place of business or worksite, within one working day after the date on which an application is filed, a copy of each application filed, together with accompanying documentation.

The Department must compile, on a current basis, a list of applications filed. The list must show the name of the employer, occupation(s), the wage rate, number of aliens sought, the period of intended employment, and date of need.

The Department must also establish a process for the receipt, investigation, and disposition of complaints respecting an employer's failure to meet a condition specified in an application, or an employer's misrepresentation of a material fact. Complaints may be filed by any aggrieved person or organization, including the bargaining representative. Any complaint to be investigated by the Department must be filed within one year after the date of an employer's alleged failure or misrepresentation of a condition specified in an application. The Department has thirty days to conduct an investigation and to determine whether an employer has failed or misrepresent a condition specified in an application. After such determination, an opportunity for a hearing will be afforded to any interested party. After such hearing, the Department will issue a finding within 60 days. Upon a determination of violation(s), the Department may impose administrative remedies such as the payment of back wages, the imposition of a civil money penalty of up to $1,000 per violation, and shall notify the Attorney General who shall not approve petitions filed by that employer during a period of at least one year.

Issues and/or Questions. The Department invites comments on the following issues and on any other matters pertinent to its responsibilities under this section.

(a) As enumerated in the Act, the statements which employers are required to make, or attest to, on their labor condition applications, do not specifically include a statement on the unavailability of U.S. workers who may be qualified for, able, and willing to perform the work for which aliens are sought. The attestation-like process as set forth in the Act includes employer wages, working conditions, and notification of bargaining representatives or employees that the firm is seeking to hire alien workers under the H–1B program. Comments are invited on whether Congress intended that the employer also attest to the unavailability of U.S. workers.

(b) Prevailing wage determinations for H–1Bs will be made pursuant to the same methodology as set forth in 20 CFR 656.40. Currently, the Employment Service relies on published wage survey data when it is available for the occupation and locality. If such data are not available it conducts an informal wage survey of employers to obtain these data. The Department invites comments on whether alternative approaches or data source(s) are available within the current guidelines which will expedite and improve prevailing wage determinations.

(c) The Department believes that the Act's intention regarding prevailing working conditions is to determine them in a like manner as current regulations set forth in 20 CFR 656.24(b). Comments are welcome on this issue.

(d) The Act requires that the labor condition application must be filed with the Department prior to issuance of the H–1B visa to the alien. The Conference Report suggests otherwise on p. 122. The Department believes that the statute must be followed. INA section 101(a)(15)(H)(i), as amended by Immigration Act of 1990 section 205(c)(1); and INA section 214(h), as amended by Immigration Act of 1990 section 205(c)(2).

(e) Should supporting documentation be submitted to the Department with the labor condition application or maintained at the place of employment?

(f) Should H–1B labor condition applications for part-time work be permitted as is now the case? If so, should the definition of part-time be limited in any way? Currently INS accepts H–1 visa applications from employers for as little as one hour of employment per application.

(g) A related issue is that of multiple labor condition applications for a single alien. Currently these are allowed in two situations: (i) When an alien works part-time for several employers simultaneously; and, (ii) when an alien works full-time on two jobs to increase income (moonlighting). Should such practices continue to be permitted under the Act? Why or why not?

(h) Who should be eligible to file an H–1B labor condition application? Should an H–1B employer be required to have a physical location in the U.S. or otherwise be able to prove it is presently doing business in the U.S.? If not, must wages be paid in U.S. currency? Should any other conditions be required?

(i) The Department is seeking comments as to whether job contractors should be treated the same as employers under this section of the Act.

C. Section 221. Off-Campus Work Authorization for Foreign Students

This section of the Act allows foreign students on F-visas to work off-campus after the first year of study for no more than twenty hours per week, and full-time during vacation periods and between terms, in occupations which are unrelated to the student's field of study, for employers who have filed an attestation with the Department. The employer's attestation must state that recruitment for the position has been ongoing for at least sixty days, that the wage offer is the higher of the actual wage at the place of employment or the prevailing wage level for the occupation in the area of employment.

In addition, the Act provides limited direction as to the Department's enforcement. When the Department determines that the employer has made an attestation that is materially false or has failed to pay wages in accordance with the attestation, after notice and opportunity for a hearing, the employer shall be disqualified from employing an F-visa foreign student under this subsection which expires on September 30, 1994.

Issues and/or Questions. The Department invites comments on the following, or any other issue(s) related to its responsibilities under this section:

(a) Should an employer be required to submit evidence in support of an attestation that recruitment has been conducted for a 60-day period? If so, what should the evidence consist of? Conceivably, a number of methods may be used to show that recruitment has taken place for at least sixty days. For example, the employer may have copies of help-wanted ads that appeared at intervals during this period. The employer may have also posted help-wanted signs at the place of employment, or the employer may have had a job order on file with an employment agency or the State employment service for sixty days.

(b) If so, should DOL evaluate the information provided by the employer on its recruitment efforts as to whether aliens were favored or whether U.S. workers were rejected for other than lawful job-related reasons?

(c) Should documentation on prevailing wage levels accompany the attestation? For example, must copies of advertisements, help-wanted postings, job orders, or other sources that state the wage offered, accompany the attestation? Or should the employer be required to keep the documentation on file at the place of employment in the

event a complaint is made and in investigation is necessary?

(d) Should the prevailing wage to which an employer must attest be determined in the same manner as currently determined under the present INA section 212(a)(14)? The regulations implementing that section define the prevailing wage as the average of wages paid to workers similarly employed in the area of intended employment; 20 CFR 656.40 (1990). If not, what other approaches do commentors recommend?

(e) Should the Department provide public access to employer F-Student attestations even though such access does not appear to be required under the Act?

(f) How should an attestation be made when an employer has multiple openings in identical occupations in numerous job sites distributed over a wide geographic area?

(g) Should an employer be required to file a new attestation each time a new worker or group of workers is needed? Or should an attestation be vaild for a fixed period of time during which the employer can employ as many students as needed? Should the Department require that each student be listed by name on the attestation?

(h) How long should an attestation be valid? How long should a single student be permitted to work under one attestation?

(i) What should DOL's role be with regard to review, approval, acceptance or rejection of attestations for students?

Section III. Other

Section 801. Educational Assistance and Training

This section of the Act provides for the allocation of funds for grants to States for the purpose of educational assistance and training for U.S. workers. The allocation is to be made according to a formula which would take into account the location of foreign workers admitted into the United States, the location of individuals in the United States who need and desire educational assistance or training, and the location of underemployed and unemployed U.S. workers. Grants are to be made after consultation with the Secretary of Education. Immigration Act of 1990 section 801, 29 U.S.C. 1506.

Issues and/or Questions. The intent of this section is to encourage the training of U .S. workers in those occupations where labor needs are being met by allien workers. DOL employment and training policy encourages the training of unemployed persons and the upgrading of skill levels of the U.S. workforce so that current and emerging labor needs can be met.

The Department invites comments on ways the Federally funded job training and reemployment programs it administers can be made more aware of and better anticipate occupations where employers are likely to seek alien workers.

Conclusion

The Department of Labor welcomes the comments, views and insights of all parties on the issues raised in this Notice and on any other matters pertinent to its responsibilities under the Act as it proceeds with the develolpment of proposed regulations to implement its responsibilities under this legislation.

Signed at Washington, DC, this 14th day of March, 1991.

Lynn Martin,

Secretary of Labor.

[FR Doc. 91–6596 Filed 3–19–91; 8:45 am]

BILLING CODE 6510–30–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 714 (89F197P)]

RIN: 1512–AA07

The Grand Valley Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area located totally within Mesa County, Colorado, to be known as "Grand Valley." This proposal is the result of a petition from Mr. Jim Seewald of Vintage Colorado Cellars Winery. The establishment of viticultural areas and the subsequent use of viticultural area names in wine labeling and advertising allows wineries to designate the specific areas where the grapes used to make their wines were grown and enables consumers to better identify wines they purchase.

DATE: Written comments must be received by May 6, 1991.

ADDRESS: Send written comments to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044–0385 (Attn: Notice No.). Copies of the petition, the proposed regulations, the appropriate maps, and any written comments received will be available for public inspection during normal business hours at: ATF Reading Room, Office of Public Affairs and Disclosure, room 6300, 650 Massachusetts Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert White, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Ave., NW., Washington, DC 20226 (202–566–7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR part 4. These regulations allow the establishment of definite viticultural areas. The regulation allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added a new part 9 to 27 CFR, for the listing of approved American viticultural areas.

Section 4.25a(e)(1), title 27 CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area, are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.G. map(s) with the boundaries prominently marked.

Petition

ATF has received a petition from Mr. James E. Seewald, President of Vintage Colorado Cellars Corporation, proposing an area in Mesa County, Colorado, as a viticultural area to be known as "Grand

Valley." This proposed viticultural area is located in the Grand Junction area, between Palisade and Fruita, in the western part of the State.

There are two wineries and approximately 16 vineyards located within the proposed area, with a total of about 80 to 90 acres planted to wine grapes. The approximate size of the proposed "Grand Valley" area is in the neighborhood of 50 square miles. The petition provides the following information as evidence that the proposed area meets the regulatory requirements discussed above.

Viticultural Area Name

The petitioner asserts that the name "Grand Valley" has been associated with the proposed area since at least the mid-nineteenth century. Historical and current usage of the name is supported by the following:

(1) The Geological Survey Professional Paper 451, titled "Geology and Artesian Water Supply, Grand Junction Area, Colorado," states "The present Colorado River above Grand Junction was known as the Grand River at least as early as 1842. * * * The city of Grand Junction was so named because of its position at the junction of the Gunnison and Grand Rivers. The Green and Grand Rivers united in eastern Utah to become the Colorado River * * * The Grand River was renamed Colorado River by act of the Colorado State Legislature, approved March 24, 1921, and by act of Congress approved July 25, 1921; but, in addition to Grand Junction, the name Grand still remains in the Grand Valley between Palisade and Mack; in Grand Mesa, which stands more than a mile above the Grand and Gunnison Valleys * * * and in Grand County, Colorado * * *

(2) "The Valley of the Grand—The Place for You," issued by the Chamber of Commerce Grand Junction, Colorado Historic Catalog, circa 1907, details "Specimens of Grand Valley Grapes."

(3) The Geographic Names Information System (G.N.I.S.) State of Colorado, Alphabetical Finding List, dated February 25, 1981, lists the following entry: Name—Grand Valley, Feature/Class—ppt, State/County—08045, Coordinate—392707N1080308W.

(4) The Grand Junction Area Chamber of Commerce map/brochure, dated 1988, describes, under the section titled "History of Grand Junction," a brief history of the area beginning with "The isolated barren Grand Valley was traveled by a mere handful of hardy pioneers prior to 1879."

(5) Soil Survey of the Grand Junction Area, Colorado Series 1940, No. 19, issued November 1955, frequently refers to the Grand Valley, particularly on the fold out pages 6 and 7.

Historical/Current Evidence of Boundaries

According to the Soil Survey of the Grand Junction Area, Colorado, the proposed viticultural area is in the Grand Valley of Colorado near the western edge of Mesa County. The area is located in the Canyon Lands section of the Colorado Plateau physiographic province. It occupies part of the floor of a deep pocket, or valley, known as the Grand Valley of Colorado. This valley, carved in the Mancos Shale formation by the Colorado and Gunnison Rivers and their tributaries, is surrounded for the most part by steep mountainous terrain. Deep canyons flank the valley to the southwest; a sharp escarpment known as the Book Cliffs rises above it to the north and northeast; foot slopes of the Grand Mesa lie to the east; and rough broken and steep, hilly land that borders high terraces or mesas lies to the south.

According to the petitioner, the Grand Valley is usually thought of as the area between the towns of Palisade and Mack. However, the petitioner's boundary stops at the town of Fruita on the western side, rather than extending further west to Mack, because of geographical features which distinguish the proposed viticultural area from the area west of Fruita. The first is that there is a difference in the quality of the soil as one moves toward the western end of the Grant Valley. According to the petitioner, much of the soil in this area will not support grape vines due to excessive salts. Also, there is a lack of supply of water for irrigation of the soil west of Fruita.

The second reason is that daily weather reports throughout the winter months always show the higher, more favorable, temperatures to be in the eastern (Palisade) end, and moving progressively westward, the temperatures (at exactly the same time of day or night) decrease with the coldest areas being reported in Mack and Loma on the western end of the valley. Since the petitioner does not believe that the area west of Fruita would support grape vines, he ended the western boundary of the proposed area at Fruita rather than extending it to Mack.

The proposed "Grand Valley" viticultural area includes within its boundaries three areas which are locally known by the names of Orchard Mesa, the Redlands, and the Vinelands. Orchard Mesa is a tract of almost flat terrace land south of the Colorado River and to the southeast of Grand Junction. The Redlands is a rolling and somewhat hilly area south of the Colorado River and between the mouth of the Gunnison River and Fruita. The Vinelands is a tract of land located southeast of the town of Palisade.

Geographical Features

Elevations in the proposed "Grand Valley" viticultural area rise from 4500 feet at the western end near Fruita to 4573 feet at Grand Junction, and 4729 feet at the eastern end of the Valley near Palisade. Deep canyons flank the Valley to the southwest. A sharp escarpment (Book Cliffs) rises to 7000 feet above the Valley to the north and northeast. The Grand Mesa stands more than a mile above the eastern edge of the Valley and steep, hilly land borders the high terraces and mesas to the south.

The climate of the proposed "Grand Valley" viticultural area is similar to that of most of the intermountain areas west of the Continental Divide in its aridity, wide range of daily temperatures, high percentage of bright sunny days, and high evaporation rate. Where the climate differs, the differences apparently are caused by protective mountain barriers.

In the extreme eastern part of the area, the Colorado River enters the Grand Valley through a steep narrow canyon that tends to stabilize air currents in the Valley. During the day, the air tends to move up the slopes that confine the Valley at its eastern end. Then, at night, the air moves down again. This air movement, spoken of as air drainage, affords a more limited daily range in temperature and less danger from frost, particularly at the eastern end of the Grand Valley where the majority of the vinifera plantings are located. Hence, the eastern section of the Valley, to a distance of about 3 or 4 miles west of Palisade, has a climate particularly suitable for orchard fruits and grapes.

Summer temperatures rise to a maximum of about 105 degrees Fahrenheit. Several days in summer may have temperatures above 100 degrees. The nights are cool, however. Also, the winters are mild. Temperatures are usually above zero, through an absolute minimum of minus 21 degrees has been recorded. The average humidity is low, so zero weather does not seem so cold nor the summers so hot as in States where the humidity is higher.

The average date of the last killing frost in spring is April 14, and the first in fall is October 21. The average frost-free, or growing season is 190 days. Occasionally, late spring or early fall frosts do some damage to fruits and

vegetables on the bottom lands and recent flood plains. On the mesas or higher terraces, frost damage is slight. Frost is especially rare in the climatically protected areas around Palisade and along the bluffs bordering the Redlands.

High winds are unusual, and cyclones are unknown. Light thundershowers are common during summer. Hail damage is localized and usually slight. Summer showers are frequently more detrimental than beneficial, especially those that come during the harvesting season.

The average annual precipitation at Grand Junction is 9.06 inches per year. This precipitation is well distributed throughout the year but is not sufficient to permit successful dry farming. The soils support only a scant growth of native grasses and shrubs if they are not irrigated. The average snowfall is 22.0 inches. The snow usually melts within a few days after it falls. The ground is free of snow most of the winter.

The proposed "Grand Valley" viticultural area is distinguishable from surrounding areas by elevation and by soil differences. In addition to the cliffs and mesas to the north and east of the valley, the surrounding areas to the northwest, west and south contain soils which are usually more alkaline than the soils within the proposed Grand Valley viticultural area, according to the petitioner. The petitioner states that, for the most part, these areas are not capable of being irrigated and are suitable only for livestock grazing. They are rocky, often steeply sloped, and the soils are classified from fair to poor, to non-existent. Large areas to the south, along the Gunnison River and Colorado Highway 50, show extensive evidence of excessive salts and alkalinity. The nearest commercial vineyards outside the proposed viticultural area are located in excess of 50 miles from the Grand Valley with mountains, mesas, valleys, canyons, and vast areas of salt, sagebrush and alkali separating the two.

The petitioner states that grapes within the proposed "Grand Valley" viticultural area are adapted to the medium textured to sandy Genola, Hinman, Mayfield, Mesa, Ravola, and Thoroughfare soils, especially where these soils are in areas where peaches are grown, since grapes and peaches tend to do well in the same type of environment. In contrast the petitioner states that soils to the west of the proposed viticultural area are predominantly Billings, Chipeta, Fruita, Mack and Persayo-Chipeta which, for the most part, are not suitable for grape growing.

Proposed Boundary

The boundary of the proposed Grand Valley viticultural area may be found on six United States Geological Survey maps with a scale of 1:24,000. The boundary is described in proposed § 9.137.

Executive Order 12291

It has been determined that this document is not a major regulation as defined in E.O. 12291 and a regulatory impact analysis is not required because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required because the proposal, if promulgated as a final rule, is not expected (1) to have secondary, or incidental effects on a substantial number of small entities; or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96–511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice because no requirement to collect information is proposed.

Public Participation

ATF requests comments from all interested parties concerning this proposed viticultural area. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date. ATF will not recognize any comment as confidential. Comments may be disclosed to the public. Any material which a commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment in not exempt from disclosure. During the comment period, any person may request an opportunity to present oral testimony at a public hearing. However, the Director reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Drafting Information

The principal author of this document is Robert L. White, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, Wine.

Issuance

Title 27, Code of Federal Regulations, part 9, American Viticultural Areas is proposed to be amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Par. 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. The Table of sections in subpart C is amended to add the title of § 9.137 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

§ 9.137 Grand Valley.

Par. 3. Subpart C is amended by adding § 9.137 to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.137 Grand Valley.

(a) *Name.* The name of the viticultural area described in this section is "Grand Valley."

(b) *Approved maps.* The appropriate maps for determining the boundary of the Grand Valley viticulatural area are six U.S.G.S. (7.5 minute series) topographical maps of the 1:24.000 scale:

(1) "Palisade Quadrangle, Colorado," edition of 1962.

(2) "Clifton Quadrangle, Colorado," edition of 1962, photorevised 1973.

(3) "Grand Junction Quadrangle, Colorado," edition of 1962, photorevised 1973.

(4) "Colorado National Monument Quadrangle, Colorado," edition of 1962, photorevised 1973.

(5) "Fruita Quadrangle, Colorado," edition of 1962, photorevised 1973.

(6) "Corcoran Point Quadrangle, Colorado," edition of 1962.

(c) *Boundary.* The Grand Valley viticulural area is located entirely within Mesa County, Colorado, in the western part of the State. The boundary is as follows:

(1) The beginning point is located on the Palisade quadrangle map at a point northeast of the city of Palisade where Interstate 70 crosses the Colorado River and intersects with U.S. Highways 6 and 24, adjacent to and immediately west of the Orchard Mesa Canal Aqueduct;

(2) From the beginning point, the boundary proceeds due east to the adjacent Orchard Mesa Canal Aqueduct and then in a southerly direction along the Orchard Mesa Canal Aqueduct to an unnamed creek in the western part of Section 11, Township 11 South, Range 98 West (T. 11 S., R. 98 W.);

(3) Thence in a southeasterly direction along the unnamed creek to its intersection with the 5000-foot contour line in the northeast corner of Section 1, T. 1 S., R. 2 E.;

(4) Thence in a northwesterly and then a southerly direction along the 5000-foot contour line to its intersection with Watson Creek in Section 12, T. 1 S., R. 2 E.;

(5) Thence in a southeasterly direction along Watson Creek to its intersection with the electrical power lines in the southern part of Section 12. T. 1 S., R. 2 E.;

(6) Thence in a southwesterly direction along the electrical power lines along the northern slope of Horse Mountain to that point where the power lines intersect with the Jeep Trail in the central part of Section 15, T. 1 S., R. 2 E.;

(7) Thence in a northwesterly direction along the Jeep Trail to its intersection with Orchard Mesa Canal No. 2 on the western border of Section 10, T. 1 S., R. 2 E.;

(8) Thence in a generally southwesterly direction along Orchard Mesa Canal No. 2 through the Clifton quadrangle map to the Canal's junction with the Gunnison River on the Grand Junction quadrangle map (western part of Section 31, T. 1 S., R. 1 E.);

(9) Thence in a generally northwesterly direction along the Gunnison River to its junction with the Colorado River in Section 22, T. 1 S., R. 1 W.;

(10) Thence continuing in a northwesterly direction along the Colorado River to the bridge where County Road 340 crosses the river (Section 15, T. 1 S., R. 1 W.);

(11) Thence in a southwesterly direction along County Road 340 approximately .2 mile to its intersection with a secondary highway, hard surface road, known locally as Monument Road;

(12) Thence in a southwesterly direction along Monument Road to the boundary of the Colorado National Monument, located on the Colorado National Monument quadrangle map (Section 30, T. 1 S., R. 1 W.);

(13) Thence in a generally northwesterly direction along the boundary of the Colorado National Monument to its intersection with County Road 340 (known locally as Broadway) on the northern border of Section 32, T. 1 N., R. 2 W;

(14) Thence in a generally northerly direction along County Road 340 to the city of Fruita where County Road 340 (known locally as Cherry Street) intersects K Road on the Fruita quadrangle map;

(15) Thence due east on K Road to the northeast corner of Section 17, T. 1 N., R. 1 W., on the Corcoran Point quadrangle map, then extending in the same direction in a straight line along the northern boundary of Section 16, T. 1 N., R. 1 W. to the intersection with Government Highline Canal;

(16) Thence in a southeasterly direction along the Government Highline Canal to its intersection with U.S. Interstate 70 on the Grand Junction quadrangle map;

(17) Thence in an easterly direction along U.S. Interstate 70 through the Clifton quadrangle map to where Interstate 70 crosses the Colorado River and intersects with U.S. Highways 6 and 24 on the Palisade quadrangle map, the point of beginning.

Approved: March 13, 1991.

Daniel R. Black,

Acting Director.

[FR Doc. 91-6531 Filed 3-19-91; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8-R]

Payment Method for Health Care Services Under the Supplemental Health Care Program for Active Duty Members of the Uniformed Services; Adoption of CHAMPUS Procedures

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This proposed rule partially implements 10 U.S.C. 1074(c), as amended by section 729 of the National Defense Authorization Act for Fiscal Year 1990 and 1991, Public Law 101-189. The recent amendment authorizes DoD to establish for the active duty supplemental care program payment rules similar to those used under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). The supplemental care program is the program which provides for the payment to civilian (non federal-governmental) health care providers for care provided to active duty members of the uniformed services. This proposed rule would adopt CHAMPUS payment amounts for the supplemental care program.

DATES: Written comments must be received on or before April 19, 1991.

ADDRESSES: Interested persons are invited to submit written comments to: Office of the Assistant Secretary of Defense (Health Affairs), Health Services Financing, room 1B657, Pentagon, Washington, DC 20301-1200.

FOR FURTHER INFORMATION CONTACT: Lt. Col. Ray Kincy, USAF, room 1B657, Pentagon, Washington, DC 20301-1200, telephone: (703) 697-8975.

SUPPLEMENTARY INFORMATION:

I. Background

The primary DoD program for purchasing health care services from private sector providers for uniformed services beneficiaries is the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), which is administered pursuant to 32 CFR part 199. CHAMPUS, however, does not cover active duty members of the uniformed services, who receive most of their health care from military medical treatment facilities. In those limited circumstances in which active duty members need care from private sector providers, such as in emergency situations, when they are stationed in an area not served by a military facility or when care is unavailable in the military treatment facility, this care is provided under the supplemental care program. This program currently is operated entirely independently from CHAMPUS and is administered by the respective uniformed services.

The implementation by CHAMPUS in recent years of more economical payment methods, particularly the DRG-based payment system for most inpatient hospital services, gave rise to a provision in the National Defense Authorization Act for Fiscal Years 1990 and 1991, Public Law 101-189, section 729, authorizing DoD to establish for the

supplemental care program "the same payment rules (subject to any modifications considered appropriate by the Secretary) as apply under [CHAMPUS]". This proposed rule partially implements this new statutory authority by implementing for the supplemental care program the CHAMPUS DRG-based payment system for most inpatient hospital care.

This proposed rule is being issued as a proposed amendment to the CHAMPUS regulation because we intend, over time, to integrate the Supplemental Care Program into the CHAMPUS administrative system. This is somewhat akin to the current CHAMPUS administration of the CHAMPVA program for the Department of Veterans Affairs. However, initially, this proposed rule addresses only DRG-covered hospital charges. Other services, such as inpatient and outpatient professional services, are expected to be addressed in the future under the authority of the statute.

II. Proposal

Highlighting several of the provisions of the proposed rule, it would establish for hospitals covered by the CHAMPUS DRG-based payment system an obligation to be participating providers under the supplemental care program. This means that, just as these hospitals must accept the DRG system payment amount as payment in full for CHAMPUS care, they must accept the same services to active members of the uniformed services. The failure of any hospital to meet this obligation can result in termination from CHAMPUS, which, in turn, can lead to decertification from Medicare.

The general rule for hospital payments that would be established pursuant to this proposed rule is that the methods established for the CHAMPUS DRG-based payment system would also apply to the supplemental care program in the same way. CHAMPUS rates are well established and would be adequate for active duty members. Based on this general approach, the supplemental care program would use the same DRG weights, the same standardized amounts, the same outlier thresholds, the same wage indices and the same adjustments that CHAMPUS uses to pay claims for inpatient hospital services. Services and facilities currently exempt under CHAMPUS DRGs will be exempt for active duty members.

There are some exceptions to the general rules arising from the different statutory nature of the supplemental care program for active duty members. One difference is that active duty members, unlike CHAMPUS beneficiaries, have no cost sharing for health care services purchased in the civilian community. Another difference is that for other than emergent care civilian community care must be pre-authorized for active duty members. These special rules and procedures are set forth in the proposed rule.

As noted above, we recognize that some CHAMPUS rules and procedures may be inappropriate for the supplemental care program in certain cases. Therefore, the proposed rule would allow authorized officials of the Office of the Assistant Secretary of Defense (Health Affairs), or the uniformed service concerned to waive any restriction or limitation, if not statutorily required, if necessary to assure the availability of adequate services to active duty members.

Finally, the proposed rule notes authorities pertinent to the supplemental care program and the administration of CHAMPUS payment methods. The proposed rule will not affect services provided, only the payment of those services.

III. Regulatory Procedures

With respect to regulatory procedures, this proposed rule is not a major rule as defined by Executive Order 12291. In addition, we certify that this proposed rule will not have a significant impact on small entities within the scope of the Regulatory Flexibility Act.

We welcome public comments on this proposed rule. We are simultaneously seeking comments from other interested components of DoD and the other "administering Secretaries" (i.e., those responsible for the non-DoD uniformed services), as required by the statute. We anticipate publication of a final rule approximately 30 days prior to implementation.

List of Subjects in 32 CFR Part 199

Claims, Health insurance, Military personnel.

For the reasons set forth in the preamble, 32 CFR part 199 is proposed to be amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086; 5 U.S.C. 301.

2. Section 199.6 is proposed to be amended by adding paragraph (a)(9) to read as follows:

§ 199.6 Authorized providers.

* * * * *

(a) * * *

(9) *Authorized provider.* A hospital or institutional provider, physician, or other individual professional provider, or other provider of services or supplies specifically authorized in this chapter to provide benefits under CHAMPUS. In addition, to be an authorized CHAMPUS provider, any hospital which is a CHAMPUS participating provider under paragraph (a)(7) of this section, shall be a participating provider for all care, services, or supplies furnished to an active duty member of the uniformed services for which the active duty member is entitled under title 10, United States Code, section 1074(c). As a participating provider for active duty members, the CHAMPUS authorized hospital shall provide such care, services, and supplies in accordance with the payment rules of § 199.16 of this part. The failure of any CHAMPUS participating hospital to be a participating provider for any active duty member subjects the hospital to termination of the hospital's status as a CHAMPUS authorized provider for failure to meet the qualifications established by this part.

* * * * *

3. Add a new § 199.16 to read as follows:

§ 199.16 Supplemental health care program for active duty members.

(a) *Purpose and applicability.* (1) The purpose of this section is to implement, with respect to certain hospital services provided under the supplemental health care program for active duty members of the uniformed services, the provision of 10 U.S.C. 1074(c). This statute authorizes DoD to establish for the supplemental care program the same payment rules, subject to appropriate modifications, as apply under CHAMPUS.

(2) This section applies to the program, known as the supplemental care program, which provides for the payment by the uniformed services to private sector health care providers for health care services provided to active duty members of the uniformed services. Although not part of CHAMPUS, the supplemental care program is similar to CHAMPUS in that it is a program for the uniformed services to purchase civilian health care services for active duty members. For this reason, the Director, OCHAMPUS assists the uniformed services in the administration of the supplemental care program.

(3) This rule applies to inpatient hospital services covered by the CHAMPUS DRG-based payment method.

(b) *Obligation of hospitals concerning payment for supplemental health care*

for active duty members. For a hospital covered by the CHAMPUS DRG based payment method to maintain its status as an authorized provider for CHAMPUS pursuant to § 199.6, that hospital must also be a participating provider for purposes of the supplemental care program. As a participating provider, each hospital must accept the DRG-based payment system amount determined pursuant to this section as payment in full for the hospital services covered by the system. The failure of any hospital to comply with this obligation subjects that hospital to exclusion as a CHAMPUS-authorized provider.

(c) *General rule for payment and administration.* Subject to the special rules and procedures in paragraph (d) of this section, and the waiver authority in paragraph (e) of this section, as a general rule the provisions of § 199.14(a)(1) shall govern payment and administration of claims from hospitals covered by the CHAMPUS DRG-based payment method under the supplemental care program as they do claims under CHAMPUS. To the extent necessary to interpret or implement the provisions of § 199.14(a)(1), related provisions of part 199 shall also be applicable.

(d) *Special rules and procedures.* As exceptions to the general rule in paragraph (c) of this section, the special rules and procedures in this paragraph shall govern payment and administration of claims from hospitals covered by the CHAMPUS DRG-based payment system under the supplemental care program. These special rules and procedures are subject to the waiver authority of paragraph (e) of this section.

(1) There is no patient cost sharing under the supplemental care program. All amounts due to be paid to the provider shall be paid by the program.

(2) Preauthorization by the uniformed services of each hospital admission, except for an emergency inpatient admission (the definition in § 199.2 shall apply), is required for the supplemental care program. It is the responsibility of the active duty member to obtain preauthorization for each admission. With respect to each emergency inpatient admission, after such time as the emergency condition is addressed, authorization for any proposed continued stay must be obtained within two working days of admission.

(3) With respect to the filing of claims and similar administrative matters under the CHAMPUS DRG-based payment system for which part 199 refers to activities of the CHAMPUS fiscal intermediaries, for purposes of the supplemental care program, responsibilities for claims processing, payment and some other administrative matters will be assigned to the nearest military medical treatment facility or medical claims office.

(4) The annual cost pass-throughs for capital and direct medical education costs that are available under the CHAMPUS DRG-based payment system are also available, upon request, under the supplemental care program. To obtain payment include the number of active duty bed days as a separate line item on the annual request to the CHAMPUS fiscal intermediaries. The fiscal intermediaries will process the requests on behalf of the supplemental care program. However, payment will be issued by the Department of Defense.

(e) *Waiver authority.* With the exception of statutory requirements, any restrictions or limitations pursuant to the general rule in paragraph (c) of this section and special rules and procedures in paragraph (d) of this section may be waived by an authorized official of the uniformed service concerned based on a determination that such waiver is necessary to assure adequate availability of health care services to active duty members.

(f) *Authorities.* (1) The Uniformed Services may establish additional procedures, consistent with this part, for the effective administration of the supplemental care program in their respective services.

(2) The Assistant Secretary of Defense for Health Affairs is responsible for the overall policy direction of the supplemental care program and the administration of this part.

Dated: March 14, 1991.

Linda Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-6456 Filed 3-19-91; 8:45 am]

BILLING CODE 3810-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-7016]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed base flood elevation modifications listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by Section 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 USC 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under Section 1363 forms the basis for new local ordinances, which, if adopted by a

local comnunity, will govern future construction within the floodplain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not prohibit development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67.

Flood insurance, Flood plains.

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
NEW YORK	
Bainbridge (town), Chenango County	
Susquehanna River:	
Approximately .6 mile downstream of the confluence of Big Brook	*976
Approximately 1.3 mile upstream of the Delaware Hudson River	*986
Maps available for inspection at the Town Hall, 15 North Main Street, Bainbridge, New York.	
Send comments to Mr. Clifford Crouch, Supervisor of the Town of Bainbridge, Chenango County, 15 North Main Street, Bainbridge, New York 13733.	
Hounsfield (town), Jefferson County	
Mill Creek:	
Approximately 1,900 feet downstream from Old Military Road	*249
Approximately 1,800 feet upstream of County Route 62	*407
Maps available for inspection at the Highway Building, Town Office, Salt Point Road, R.D. 1, Watertown, New York.	
Send comments to Mr. Edward Cobb, Hounsfield Town Supervisor, Jefferson County, County Route 62, R.D. 1, Box 66, Sacketts Harbor, New York 13685.	
North Norwich (town), Chenango County	
Chenango River:	
Corporate limits	*1,010
At CONRAIL	*1,019
Maps available for inspection at the North Norwich Town Hall, North Norwich, New York.	
Send comments to Mrs. Nancy Adsit, Supervisor of the Town of North Norwich, Chenango County, R.D. 1 Tracy Road, Sherburne, New York 13460.	
WEST VIRGINIA	
Keyser (city), Mineral County	
North Branch Potomac River:	
Approximately 400 feet downstream of confluence of New Creek	*790
Approximately 200 feet upstream of confluence of New Creek	*793
New Creek:	
At the confluence of North Branch Potomac River	*791
Approximately 560 feet downstream of CSX Transportation	*800
Maps available for inspection at Ms. Penny Sanders office, City Clerk, 111 North Davis Street, Keyser, West Virginia.	
Send comments to The Honorable Glen Ryan, Mayor of the City of Keyser, Mineral County, P.O. Box 70, Keyser, West Virginia 26726.	
Mineral County (unincorporated areas)	
North Branch Potomac River:	
Approximately 3.4 miles downstream of confluence of Patterson Creek	*563
Approximately 1.5 miles upstream of Westvaco Dam	*982
Approximately 6.5 miles upstream of Bloomington Lake Dam	*1,507
Approximately 1,030 feet upstream of confluence of Abram Creek	*1,692
New Creek:	
Approximately 1.1 miles downstream of confluence of Stony Run	*828
Approximately 0.8 mile upstream of County Route 5/2 bridge	1,374
Patterson Creek:	
At confluence with North Branch Potomac River	*577
Approximately 0.2 mile upstream of confluence of Horseshoe Creek	*593
Maps available for inspection at Michael Bland's Office, County Coordinator, 150 Armstrong Street, Keyser, West Virginia.	
Send comments to Mr. Charles L. Logsdon, President of the Mineral County Commission, 150 Armstrong Street, Keyser, West Virginia 26726.	
WISCONSIN	
Burnett County (unincorporated areas).	
Trade River:	
About 3000 feet downstream of State Highway 87	*877
About 800 feet upstream of Cedar Point Road	*911
Wood River:	
At mouth	*919
Just downstream of County Highway M	*919
Just upstream of County Highway M	*924
Just downstream of Fink Road	*968
Wood Lake: Entire shoreline	*919
Little Wood Lake: Entire shoreline	*939
Big Trade Lake: Entire shoreline	*911
Little Trade Lake: Entire shoreline	*911
Lipsett Lake: Entire shoreline	*976
Rice Lake: Entire shoreline	*975
Benoit Lake: Entire shoreline	*975
Yellow Lake: Entire shoreline	*931
Little Yellow Lake: Entire shoreline	*931
Spirit Lake: Entire shoreline	*945
Clam Lake: Entire shoreline	*956
Lower Clam Lake: Entire shoreline	*956
Danbury Flowage: Entire shoreline	*930
Maps available for inspection at the Zoning Administration Office, County Government Center, 7410 County Road K, Siren, Wisconsin.	
Send comments to The Honorable Carmen Hoeppner, Chairperson, County Board, Burnett County, 7410 County Road K, Room 102, Siren, Wisconsin 54872.	

3. The proposed modified base (100-year) flood elevations for selected locations are:

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
California	City of Santa Barbara, Santa Barbara County.	Mission Creek	Just above Arrellaga Street	*80	*85
			Just above Pedregosa Street Bridge	*95	*105
			At Pueblo Street Bridge	*N/A	*129
			Just below Tallant Road	*160	*159
			Approximately 1,500 feet above State Street	*251	*251
		Mission Creek Overflow	Just above confluence with Mission Creek	*N/A	*129
			Just above Castillo Street	*N/A	*147
			At Intersection of Bath Street and Quinto Street.	*N/A	*161
			At divergence from Mission Creek	*N/A	*187

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps are available for review at The Community Development Office, 630 Garden Street, Santa Barbara, California. Send comments to The Honorable Sheila Lodge, Mayor, City of Santa Barbara, City Hall, P.O. Box 1990, Santa Barbara, California 93102.					
California	City of San Juan Bautista, San Benito County.	San Juan Creek	At confluence with San Juan Creek Tributary	None	*189
			Just upstream of State Highway 156	*None	*196
			At San Juan-Hollister Road	*None	*199
		San Juan Creek Tributary	At confluence with San Juan Creek	*None	*189
			Just downstream of State Highway 156	*None	*207
			At intersection of San Juan-Hollister Road and San Juan Grade Road.	*None	*218
Maps are available for review at City Hall, 311 Second Street, San Juan Bautista, California. Send comments to The Honorable Marlene Dwyer, Mayor, City of San Juan Bautista, P.O. Box 1086, San Juan Bautista, California 95045.					
Colorado	City of Arvada, Adams and Jefferson Counties.	Ralston Creek	Just downstream of West 56th Street	None	*5,260
			Just above Wadsworth Bypass	*5,305	*5,307
			At Brooks Drive Bridge	*5,358	*5,360
			Just above Simms Street	*5,430	*5,427
			Approximately 100 feet downstream of crossing of Croke Canal.	*None	*5,563
		Leyden Creek	At confluence with Ralston Creek	*5,421	*5,420
			At Simms Street	*5,430	*5,432
			At West 72nd Avenue	*5,435	*5,441
			Approximately 1,500 feet upstream of West 72nd Avenue.	*5,455	*5,452
		Van Bibber Creek	At confluence with Ralston Creek	*5,345	*5,436
			Just above Miller Street Bridge	*5,375	*5,376
			Approximately 900 feet north of intersection of West 54th Drive and West 54th Avenue.	*None	*5,427
Maps are available for review at the City Engineer's Office, 8101 Ralston Road, Arvada, Colorado. Send comments to the Honorable Lynn Easton, Mayor, City of Arvada, P.O. Box 8001, Arvada, Colorado 80001.					
New York	West Seneca, Town, Erie County.	Buffalo River	At the downstream corporate limits	*592	*593
			At confluence of Buffalo Creek and Cayuga Creek.	*594	*595
		Buffalo Creek	At confluence of Buffalo River	*594	*595
			At the upstream corporate limits	*659	*656
		Cayuga Creek	At confluence with Buffalo River	*594	*595
			At upstream corporate limits	*600	*601
		Cazenovia Creek	Approximately 650 feet downstream of the downstream corporate limits.	*None	*597
			Approximately 150 feet downstream of Lydecker Road.	*658	*657
		Ebenezer Brook	At confluence with Cazenovia Creek	*None	*616
			At downstream side of Union Road	*None	*638
Maps available for inspection at the Town Hall, 1250 Union Hall, West Seneca, New York 14224. Send comments to Ms. Joan F. Lillis, West Seneca Town Supervisor, Erie County, 1250 Union Road, West Seneca, New York 14224.					
Ohio	Unincorporated Areas of Wood County.	Maumee River	At City of Rossford corporate limits	*579	*581
			At western county boundary	*646	*650
		Sister Creek	At mouth	*628	*632
			Just downstream of dam	*628	*632
			Just upstream of dam	*646	*646
		Sugar Creek	At mouth	*628	*632
			Just downstream of dam	*629	*632
			Just upstream of dam	*646	*646
Maps available for inspection at the Engineer's Office, 1 Courthouse Square, Bowling Green, Ohio. Send comments to The Honorable Leonard Stevens, President, Board of County Commissioners, Wood County, 1 Courthouse Square, Bowling Green, Ohio 43402.					

Issued: March 11, 1991.

C. M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 91-6601 Filed 3-19-91; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-162; FCC 91-81]

Evaluation of the Television Syndication and Financial Interest Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; reopening of comment period and supplemental information.

SUMMARY: The Commission previously issued a Notice of Proposed Rulemaking (55 FR 11222, March 27, 1990) and a Further Notice of Proposed Rulemaking (55 FR 47496, November 14, 1990) regarding possible changes in the financial interest and syndication rules, which relate to television network program practices. The reply comment period in the proceeding closed December 21, 1990. In an order adopted March 15, 1991, the Commission reopened the comment period to consider supplemental information to ensure a fuller record for its consideration. The effect of the Commission's Order is to permit further comment on the supplemental information before the Commission makes a decision in the proceeding.

DATES: Comments on the supplemental information may be filed on or before March 25, 1991. Reply comments will not be permitted.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Judith Herman, (202) 632-6302.

SUPPLEMENTARY INFORMATION:

Order Requesting Further Comment

Adopted: March 15, 1991
Released: March 15, 1991
By the Commission:

1. On March 13, 1991, the Commission announced that it had deleted from its agenda at the March 14, 1991 Meeting consideration of a decision in this proceeding. In an effort to give the public a further opportunity to comment on the proposals under consideration, the Commission requests comment on two alternative proposals appended to this Order. Although this further opportunity to comment is not required under the Administrative Procedure Act, the Commission has decided to permit additional comment as a matter of its discretion. Comments must be submitted by March 25, 1991. (Reply Comments will not be permitted.)[1]

2. Accordingly, *it is ordered* that under the authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, comments on proposals appended to this Order may be filed on or before March 25, 1991.

Proposal I

The following proposal is based on the determination that the factual record developed in this proceeding supports granting significant deregulatory relief to the networks, subject to safeguards to prevent or mitigate potential abuses affecting the production and local television station communities which substantially contribute to the diversity we seek to promote and preserve.

1. Network Prime Time Enterainment Limitation

Financial interest and syndication restrictions are eliminated for all network programming other than prime time entertainment.

2. Financial Interest

A. Networks may acquire a financial interest in their entire prime time entertainment schedule, provided that the option period for those programs in which they obtain a financial interest is no longer than two years. (If the financial interest is obtained at any time after a longer option term was agreed to initially, that term shall be reduced to no more than two years from the effective date of the initial agreement.)

B. This option period limit would not apply to the remainder of the network prime time entertainment schedule, *i.e.*, programs in which the network has no financial interest or those it has produced "in-house".

3. Domestic Syndication

Networks may distribute domestically all "in-house" productions airing on their network. The current rule requiring networks to "bulk sell" syndication rights in their in-house productions to an independent distributor for a flat fee is eliminated. Further, to promote network opportunities in the growing international marketplace, "in-house shall be defined to include foreign co-productions.

A. *"In-house" Definition:* In-house productions shall be defined as network programs: (1) which are either (a) "solely produced" by the network or (b) co-produced by the network with foreign entities; and (2) which air on that network. "Solely produced" shall be defined as network possession of 100% of the copyright, payment of 100% of the financing, and full creative control. Foreign entities in co-productions shall be defined as those production entities registered to do business and located outside of the United States.

B. *Schedule Cap:* While a network may undertake program production without limit (for its own network, another network, or first-run), a network may not fill more than 40% of its prime time entertainment program schedule with its own "in-house" productions.

C. *Safeguards:* Network domestic syndication of "in-house" productions shall be subject to "warehousing" and affiliate favoritism safeguards and reporting requirements.

(1) Networks must make their "in-house" productions available for airing in syndication within four years of a program's network exhibition or six months after the end of its network run, whichever is sooner.

(2) Affiliate favoritism shall be presumed if an "in-house" production is syndicated to network O&Os or affiliates in more than 40% of the markets where the program has been sold.

(3) Networks must maintain semi-annual reports in their O&O public files, first, certifying their compliance with our rules and, second, listing their "in-house" productions (and the domestic syndication record of such programs) and programs in which they hold a financial interest. In addition, upon Commission request, a network shall make its program contracts. available for review.

4. Foreign Distribution

Neworks may distribute all of their in-house productions internationally Further, networks may distribute internationally any shows they produce for other networks or for first-run. Also, networks may obtain a passive financial interest in the foreign distribution of any programs airing on their schedule. In

[1] Procedures regarding filings are set forth in §§ 1.415 and 1.419 of the Commission's Rules. To file formally, participants must file an original and four copies of all comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments should be sent to Office of the Secretary, Federal Communications, Washington, DC 20554. Comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

short, networks may either distribute or participate in the foreign distribution revenues of all network programming.

5. First Run Syndication

Networks shall be allowed to produce, but not to distribute domestically, first-run syndication entertainment programming. Networks may hold a financial interest in first-run syndication that is produced "in-house" and syndicated independently subject to our "affiliate favoritism" safeguard. (Further, network first-run programming shall be considered network programming for purposes of the prime time access rule.)

6. Network Definition

For purposes of these rules, a network shall be defined as any entity providing 14 or more hours per week of prime time entertainment programming on a regular basis to interconnected affiliates that reach, in aggregate, at least 75 percent of television households nationwide.

7. Transition Period

A. A new network's program ownership rights (including financing interests and the right to distribute domestically or internationally) obtained prior to becoming a "network" shall be "grandfathered." A new network and its affiliates also shall be allowed a maximum of 36 months to bring preexisting contractual arrangements into full compliance with our prime time access rule.

B. New networks are otherwise required to comply immediately with the financial interest and syndication rules, in particular as to any program ownership rights obtained subsequent to becoming a "network."

8. Review

Review of these modified financial interest and syndication rules shall commence by a date certain four years after their effective date. If, in the Commission's judgment, market conditions at the time of that review are sufficient, these rules may be repealed.

9. Effective Date

These rules shall take effect on June 15, 1991, with our financial interest rule applying to all new series or other new prime time entertainment programs originally licensed by a network on or after that date. To avoid unnecessary disruption, the temporary waiver the Commission granted to Fox Broadcasting Company on May 4, 1990 shall remain in effect until, but only until, our new rules becomes effective.

Proposal II

The second proposal would be based on the conclusion that the video programming marketplace has changed so significantly since 1970 that the current financial interest and syndication rules are no longer warranted, and may in fact be harming competition and diversity. Accordingly, the plan proposes to (1) phase out progressively relaxed financial interest and syndication rules in an orderly fashion, while (2) retaining minimally intrusive regulatory safeguards designed to ensure a smooth transition away from existing rules. The objectives of this proposal would be to assure the public access to diverse sources of television programming; foster vigorous competition in all markets involved; eliminate obstacles that decrease the efficiency of market participants and increase the cost or reduce the quality of television programming; and avoid restrictions that interfere unnecessarily with effective U.S. participation in international markets.

Since the rules were adopted in 1970, the number of video programming outlets has expanded substantially, with the number of independent stations more than quadrupling, cable penetration increasing from less than 10 percent to almost 60 percent, and a fourth television network—Fox—emerging. As these new outlets have developed, the networks have faced increasing, vigorous competition for video programming product from other program distributors and from each other. In contrast to the dominant position they held in 1970, each network today, on average, purchases only 16 percent of prime time entertainment programming and garners only 22 percent of the audiences viewing such programming. At the same time, the past two decades have witnessed increased concentration in both the program supply and the program syndication markets.

In view of these changes, the second proposal would conclude that the networks would be unable to "extract" financial interests or syndication rights from unwilling program producers, or to pay less than fair market value for such interests or rights. Networks attempting to engage in such anticompetitive activities would simply lose the producer to one of the many other competitors in the program purchase market. The proposal would also determine that there is little evidence that the networks would be able to behave anticompetitively in the syndication marketplace, but would provide safeguards against whatever incentives may exist for a network to take advantage of its relationship with its affiliates.

In addition, the proposal would conclude that competition and diversity in the video programming marketplace would increase as a result of greater network participation because the networks would become alternative distributors of programming in the concentrated program syndication market. The proposal also would determine that significantly relaxing the current restrictions would enhance U.S. competitiveness by enabling the networks to better compete both at home and abroad.

Against this background, comment is sought on the following proposals:

1. *Financial Interests.* Under one alternative, television networks would be permitted to acquire financial interests from program producers under a three-year transitional rule designed to allow the Commission to monitor industry developments and provide added insurance that industry expectations are not unreasonably undermined. In the first year, a network would be permitted to obtain a financial interest in no more than 25 percent of the total prime time entertainment programming transmitted on its network. That limit would increase to 50 percent in year two, and 75 percent in year three. The financial interest cap would not apply to programs produced in-house by a network, or programs not carried on its network.

Another option would be to allow networks to acquire financial interests in up to 50 percent of their prime time entertainment schedules. This limit would not pertain to in-house productions or programs not aired on the network, and would remain in effect until the rules are reviewed in four years according to the procedures outlined in point 6 below.

2. *Domestic Syndication.* On domestic syndication alternative would assume adoption of the three-year transitional rule for financial interests described above, and permit the networks to acquire domestic syndication rights in any network program in which they also acquired a financial interest. Alternatively, the networks could be permitted to hold domestic syndication rights in any program in which they also held financial interests under the "50 percent of schedule" option outlined above. Under either proposal, networks would be able to hold domestic syndication rights in first-run programs.[1]

[1] With respect to the use of network first-run programming during the prime time access (PTAR)

Continued

programs not aired on their networks, and programs they produce in-house.

Given the extent of modification proposed in longstanding rules, it is prudent to guard against the potential that a network conceivably could take advantage of its relationship with its affiliates. Thus, both of the foregoing proposals would also include "warehousing" and "affiliate favoritism" provisions. Specifically, networks holding domestic syndication rights in given programs would be required to make those programs available for syndication within 5 years of the commencement of the network telecast or within 6 months of the end of the network "run," whichever occurs first. In addition, to address concerns of potential affiliate favoritism, the networks would be required to offer syndicated programming, both off-network and first-run, to non-affiliates on terms and conditions that are no less favorable than those offered to affiliated stations or network owned stations.

3. *Foreign Syndication.* As with the options described above for domestic syndication, networks would be permitted to acquire foreign syndication rights in any program in which they also acquired a financial interest. This restriction either would assume adoption of the three-year transitional rule for financial interests, or would be subject to review in four years as part of the "50 percent of schedule" alternative. Networks would also be permitted, without limitation, to syndicate outside the United States first-run programs, programs, not aired on their networks and programs produced in-house. The warehousing and affiliate favoritism safeguards discussed above for domestic syndication would not apply to network foreign syndication activities.

4. *Reporting Requirements.* In order to enable the Commission to monitor compliance with the revised financial interest and syndication rules, each network would be required to file an annual report listing: (1) all prime time entertainment programs in which it held a financial interest; (2) all programs in which it held domestic syndication rights; and (3) all stations to whom a program had been syndicated domestically. The networks would also be required, upon Commission request, to file a copy of any program contracts involving financial interests or syndication rights. The Commission would periodically review the annual reports, and any submitted contracts, to assess whether there are any indications of affiliate favoritism or warehousing, and would pursue timely regulatory or enforcement actions if appropriate.

5. *Network Definition.* Under the first network definition option, a network would be defined as any entity that regularly distributes 14 or more hours of prime time programming per week,[2] on an interconnected basis, to 100 or more television stations. This definition would be designed to encompass entities that provide half of a prime time schedule to their affiliates on a nationwide basis.

Another option would be to base the network definition on the average audience share during prime time. In 1970, the three established networks were subjected to the rules because they represented the only way to reach the *mass* audience. At the time, this was understood to be roughly one-third of the nation's TV households. Currently, prime time audiences choose among five primary commercial viewing options (in addition to non-commercial PBS): ABC, CBS, NBC, independent television stations (including the Fox stations) and cable television. Each of these alternatives garners approximately one-fifth of the audience.

Under an audience share approach, an entity that provides interconnected over-the-air television service could be treated as a network under the modified rules once it emerged as an alternative to existing viewing options. That is, once an entity obtains an average prime time share that is equivalent to one-sixth of the television audience, the rules would apply (subject to a reasonable phase-in period). This average share would need to be maintained for an adequate measurement interval, such as, for example, eight ratings periods. It would also be necessary to establish a minimum audience reach under this definition to ensure that the rules apply only to entities with nationwide market presence.

6. *Presumptive Review.* Under the "50 percent of schedule" option outlined above, it would be necessary to establish a date to review the modified rules. Such a process could be modeled after the electronic publishing restrictions imposed on AT&T in the Modification of Final Judgment proceeding, which included a set date for review and presumptive repeal. For purposes of the current proceeding, the Commission could establish a date for review four years after the effective date of the new rules. Presumption would favor repeal. Six months before the date set for this review, interested parties would be given the opportunity to file comments.

7. *Waiver of Restrictions.* To the extent that any regulations are adopted by the Commission that would limit, in some respects, the power of the networks when negotiating for program product, it may be necessary to specify which program producers, if any, the limitations are designed to protect. For example, it may not make sense to apply such restrictions equally to all program producers, regardless of their size or their prior success in obtaining network exhibition for their program product. In addition, it may be wise to give program producers the authority, at any stage, to knowingly waive whatever government-imposed contractual restrictions might otherwise apply. Such a provision would allow a program producer who believes that those restrictions are adversely limiting his ability to secure desired network financing to waive the applicability of any FCC "safeguards" before the contractual negotiations begin.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91–6714 Filed 3–19–91; 8:45 am]

BILLING CODE 6712–01–M

period, it would be possible either to define all such programming as "network" programming for PTAR purposes or to include it within the PTAR limits only when syndicated to a network's own affiliates. Non-network programming produced by a network or at one of its own stations would not be subject to these limits if syndicated by an independent entity.

[2] For this purpose, prime time would be defined as 7 to 11 p.m. Eastern Standard Time.

Notices

Federal Register
Vol. 56, No. 54
Wednesday, March 20, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

1991-Crop Peanuts; Determinations Regarding National Average Support Levels for Quota and Additional Peanuts and the Minimum Commodity Credit Corporation Export Edible Sales Price for Additional Loan Peanuts

AGENCY: Commodity Corporation, USDA.

ACTION: Notice of determination.

SUMMARY: This notice affirms the determinations announced by the Secretary of Agriculture on January 30, 1991, that with respect to the 1991 crop of peanuts: (1) The national average level of price support for quota peanuts shall be $642.79 per short ton; (2) the national average level of support for additional peanuts shall be $149.75 per short ton; and (3) the Commodity Credit Corporation (CCC) minimum sales price for export for edible use of additional peanuts which were pledged as collateral for a price support loan shall be $400.00 per short ton.

EFFECTIVE DATE: January 30, 1991.

FOR FURTHER INFORMATION CONTACT: Ronald W. Holling, Agricultural Economist, Commodity Analysis Division, Agricultural Stabilization and Conservation Service, room 3741-South Building, USDA, P.O. Box 2415, Washington, DC 30013, telephone 202–447–7477. The final regulatory impact analysis describing the impact of implementing this determination is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice has been reviewed in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major". The notice provided will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual, industries, Federal, State or local governments or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The titles and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loans and Purchases; Number 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice because ASCS is not required by 5 U.S.C. 533 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this determination.

This program/activity is not subject to the provisions of Executive Order No. 12372 relating to intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Section 1017 of the Food Security Act of 1985, as amended by the Food, Agriculture, Conservation, and Trade Act of 1990, provides that the Secretary of Agriculture shall determine the rate of loans, payment, and purchases under the Agricultural Act of 1949 for the 1991–1995 crops of commodities without regard to the requirements for notice and public participation in rulemaking prescribed in section 553 of title 5 of the United States Code or in any directive of the Secretary.

The announcement of the national support level for the 1991 crop of quota and additional peanut was required to be made by the Secretary of Agriculture no later than February 15, 1991.

1. Quota Peanuts Support Level

In accordance with section 108B(a)(2) of the 1949 Act, as added by the Food, Agriculture, Conservation, and Trade Act of 1990, the national average price support level for the 1991 crop of quota peanuts must be the corresponding 1990-crop price support level adjusted to reflect any increases in the national average cost of peanut production (excluding any changes in the cost of land) during the calendar year immediately preceding the marketing year for the 1991 crop, except that the price support level cannot exceed the 1990 crop support level by more than 5 percent. The 1990-crop quota peanut price support level was $631.47 per short ton. The 1990-crop support level was determined based on the following estimates:

Cost Escalator Calculations

Variable/Component	1989-CROP	1990-CROP
Total cash expense, capital replacement, and unpaid labor.	$492.43/acre	$510.47/acre
Less net land return	$65.09/acre	$68.89/acre
Adjusted costs	$427.34/acre	$441.49/acre
Trend yields	2,500 lbs/ac	2,500 lbs/ac
Adjusted costs per pound.	$0.17094	$0.17660
Adjusted costs per short ton.	$341.88	$353.20
Average change during 1990 in the cost of producing a short ton of peanuts.		$11.32
1991-crop quota support level.	$631.41 + $11.32 = $642.79	

As indicated in the chart, which was derived from data of the Department of Agriculture's Economic Research Service, it was determined that relevant peanut production costs, as calculated in accordance with the statute, had increased by $11.32 per short ton. The 1991-crop quota peanut price support level will accordingly be $642.79 per short ton.

2. Additional Peanut Support Level

Section 108B(b)(1) of the 1949 Act, as added by the Food, Agriculture, Conservation, and Trade Act of 1990, provides that price support shall be made available for additional peanuts at such level as the Secretary determines will ensure no losses to CCC from the sale or disposal of such peanuts taking into consideration the demand for peanut oil and peanut meal, expected prices of other vegetable oils and protein meals, and the demand for peanuts in foreign markets.

The announced $149.75 per short ton price support level was selected based on its general acceptance in the industry as a level that would ensure no losses to CCC from the sale or disposal of loan peanuts. Peanuts pledged as collateral for a price support loan are sold to recover the loan and related costs. Based on possible prices for peanuts in the coming year and potential handling cost, the $149.75 per short ton support

level will provide a reasonable margin of error to prevent losses to the CCC on the sale and disposition of the peanuts. Prior to making this determination the following information was considered.

The domestic use of peanut oil during MY 1991 is forecast to be 107,500 st, up 16 percent from projected MY 1990 domestic use. MY 1991 peanut oil beginning stocks are expected to be 12,500 st, up 500 st from MY 1990. Peanut oil prices are expected to fall to 40.5 cents per pound from a projected MY 1990 average price of 42.0 cents per pound.

The domestic use of peanut meal during MY 1991 is forecast to be 150,000 st, up 18,000 st from MY 1990. MY 1991 peanut meal beginning stocks are expected to be 5,000 st, unchanged from MY 1990. Peanut meal prices are expected to remain generally unchanged from the projected MY 1990 average annual price of $192.50 per st.

The expected average soybean oil price for MY 1991 is expected to be 21.0 cents per pound, down 2.3 percent from MY 1990.

The expected average cotton seed oil price for MY 1991 is expected to be 19.75 cents per pound, down 3.7 percent from MY 1990.

The expected average soybean meal price for MY 1991 is expected to be $172.50 per st, unchanged from MY 1991.

The expected average cotton seed meal price for MY 1991 is expected to be $140.00 per st, down $12.50 from MY 1991.

World use of peanuts for 1990/91 is expected to be 21.37 million metric tons, down 0.8 percent from 1989/90. World peanut production for 1990/91 is forecast at 21.28 million metric tons, down 0.7 percent from 1989/90. Ending stocks for 1990/91 are forecasted at 0.45 million metric tons, down 17 percent from 1989/90.

3. CCC Minimum Sales Price for Additional Peanuts Sold for Export Edible Use. The announcement of a minimum price at which additional peanuts owned or controlled by CCC may be sold for use as edible peanuts in export markets is announced at the same time that the quota and additional peanut support levels are announced so that producers and handlers have information to facilitate the negotiation of private contracts for the sale of additional peanuts.

An overly high price may create an unrealistic expectation of high pool dividends and discourage private sales. If too low, the price could unnecessarily adversely affect prices paid to producers for additional peanuts.

The minimum price at which 1990-crop additional peants owned or controlled by CCC was established at $400 per short ton. The stability of market conditions supports the continued use of this established price.

Determinations

Accordingly, the following determinations, announced by the Secretary of Agriculture on January 30, 1990, are hereby affirmed:

(1) The national average level of price support for the 1991 crop of quota peanuts shall be $642.79 per short ton. This level of price support is applicable to eligible 1991-crop farmer stock peanuts in bulk or in bags, net weight basis.

(2) The national average level of price support for the 1991 crop of additional peanuts shall be $149.75 per short ton. This level of price support is applicable to eligible 1991-crop farmer stock peanuts in bulk or in bags, net weight basis.

(3) The minimum export edible sales price at which CCC will sell 1991-crop additional peanuts shall be $400 per short ton for peanuts which are: (1) Owned by CCC, or (2) pledged as collateral for a price support loan made available by CCC.

Authority: 7 U.S.C. 1359a and 1445c-3.; 15 U.S.C. 714b and 714c.

Signed at Washington, DC on March 12, 1991.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91-6552 Filed 3-19-91; 8:45 am]

BILLING CODE 3410-05-M

Food and Nutrition Service

Child Nutrition Programs—Income Eligibility Guidelines

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces the Department's annual adjustments to the Income Eligibility Guidelines to be used in determining eligibility for free and reduced-price meals or free milk for the period from July 1, 1991 through June 30, 1992. These guidelines are used by schools, institutions, and centers participating in the National School Lunch Program, School Breakfast Program, Special Milk Program for Children, and Child and Adult Care Food Program and by commodity schools. The annual adjustments are required by section 9 of the National School Lunch Act. The guidelines are intended to direct benefits to those children most in need and are revised annually to account for increases in the Consumer Price Index.

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, FNS, USDA, Alexandria, Virginia 22302, or by phone at (703) 756-3619.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under Executive Order 12291 and has been classified not major. This notice will not have an annual effect on the economy of $100 million or more, nor will it result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. This action will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

These programs are listed in the Catalog of Federal Domestic Assistance under No. 553, No. 555, No. 10.556 and No. 10.558 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, and the final rule related notice published at 48 FR 29114, June 24, 1983.)

This notice imposes no new reporting or recordkeeping provisions that are subject to OMB review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601-612) and thus is exempt from the provisions of that Act.

Background

Pursuant to section 9(b)(1) and 17(c)(4) of the National School Lunch Act (42 U.S.C. 1758(b)(1) and 42 U.S.C. 1766(c)(4)), and sections 3 (a)(6) and 4(e) of the Child Nutrition Act of 1966 (42 U.S.C. 1772(a)(6) and 1773(e)), the Department annually issues the Income Eligibility Guidelines for free and reduced-price meals in the National School Lunch Program (7 CFR part 210), School Breakfast Program (7 CFR part 220), Child and Adult Care Food Program (7 CFR part 226), and commodity schools (7 CFR part 210), and the guidelines for free milk in the Special Milk Program (7 CFR part 215). These eligibility guidelines are based on the Federal income poverty guidelines and are stated by household size.

The Department requires schools and institutions which charge for meals separately from other fees to serve free meals to all children from any household with income at or below 130 percent of the poverty guidelines. The Department also requires such schools and institutions to serve reduced-price meals to all children from any household with income higher than 130 percent of the poverty guidelines, but at or below 185 percent of the poverty guidelines. Schools and institutions participating in the Special Milk Program may, at local option, serve free milk to all children from any household with income at or below 130 percent of the poverty guidelines.

Definition of Income

"Income," as the term is used in this notice, means income before any deductions such as income taxes, social security taxes, insurance premiums, charitable contributions and bonds. It includes the following: (1) Monetary compensation for services, including wages, salary, commissions or fees; (2) net income from nonfarm self-employment; (3) net income from farm self-employment; (4) social security; (5) dividends or interest on savings or bonds or income from estates or trusts; (6) net rental income; (7) public assistance or welfare payments; (8) unemployment compensation; (9) government civilian employee or military retirement, or pensions or veterans payments; (10) private pensions or annuities; (11) alimony or child support payments; (12) regular contributions from persons not living in the household; (13) net royalties; and (14) other cash income. Other cash income would include cash amounts received or withdraw from any source including savings, investments, trust accounts and other resources which would be available to pay the price of a child's meal.

"Income," as the term is used in this notice, does not include any income or benefits received under any Federal programs which are excluded from consideration as income by any legislative prohibition. Furthermore, the value of meals or milk to children shall not be considered as income to their households for other benefits programs in accordance with the prohibitions in section 12(e) of the National School Lunch Act and section 11(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1760(e) and 1780(b)).

The Income Eligibility Guidelines

The following are the Income Eligibility Guidelines to be effective from July 1, 1991 through June 30, 1992. The Department's guidelines for free meals and milk and reduced-price meals were obtained by multiplying the 1991 Federal income poverty guidelines by 1.30 and 1.85, respectively, and by rounding the result upward to the next whole dollar. Weekly and monthly guidelines were computed by dividing annual income by 52 and 12, respectively, and by rounding upward to the next whole dollar.

INCOME ELIGIBILITY GUIDELINES

[Effective from July 1, 1991, to June 30, 1992]

Household size	Federal poverty guidelines			Reduced-price meals—185%			Free meals—130%		
	Annual	Month	Week	Annual	Month	Week	Annual	Month	Week
48 Contiguous United States, District of Columbia, Guam and Territories									
1	6,620	552	128	12,247	1,021	236	8,606	718	166
2	8,880	740	171	16,428	1,369	316	11,544	962	222
3	11,140	929	215	20,609	1,718	397	14,482	1,207	279
4	13,400	1,117	258	24,790	2,066	477	17,420	1,452	335
5	15,660	1,305	302	28,971	2,415	558	20,358	1,697	392
6	17,920	1,494	345	33,152	2,763	638	23,296	1,942	448
7	20,180	1,682	389	37,333	3,112	718	26,234	2,187	505
8	22,440	1,870	432	41,514	3,460	798	29,172	2,431	561
For each add'l family member add	+2,260	+189	+44	+4,181	+349	+81	+2,938	+245	+57
Alaska									
1	8,297	691	160	15,337	1,279	295	10,777	899	208
2	11,110	926	214	20,554	1,713	396	14,443	1,204	278
3	13,930	1,161	268	25,771	2,148	496	18,109	1,510	349
4	16,750	1,396	323	30,988	2,583	596	21,775	1,815	419
5	19,570	1,631	377	36,205	3,018	697	25,441	2,121	490
6	22,390	1,866	431	41,422	3,452	797	29,107	2,426	560
7	25,210	2,101	485	46,639	3,887	897	32,773	2,732	631
8	28,030	2,336	540	51,856	4,322	998	36,439	3,037	701
For each add'l family member add	+2,820	+235	+55	+5,217	+435	+101	+3,666	+306	+71
Hawaii									
1	7,610	635	147	14,079	1,174	271	9,893	825	191
2	10,210	851	197	18,889	1,575	364	13,273	1,107	256
3	12,810	1,068	247	23,699	1,975	456	16,653	1,388	321
4	15,410	1,285	297	28,509	2,376	549	20,033	1,670	386
5	18,010	1,501	347	33,319	2,777	641	23,413	1,952	451
6	20,610	1,718	397	38,129	3,178	734	26,793	2,233	516
7	23,210	1,935	447	42,939	3,579	826	30,173	2,515	581
8	25,810	2,151	497	47,749	3,980	919	33,553	2,797	646
For each add'l family member add	+2,600	+217	+50	+4,810	+401	+93	+3,380	+282	+65

Authority: (42 U.S.C. 1758(b)(1))

Dated: March 15, 1991.

George A. Braley,

Associate Administrator.

[FR Doc. 91-6583 Filed 3-19-91; 8:45 am]

BILLING CODE 3410-30-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Patent and Trademark Office (PTO)

Title: Patent Processing Requirements

Form number: Agency-NA; OMB #0605-0020

Type of Request: Revision

Burden: 896,000 responses; 352,098 reporting hours. Average hours per response is .4 of an hour.

Needs and Uses: The purpose of this revision is to replace the cover letter that is submitted with a Patent document or set of documents, with a cover sheet. The cover sheet will contain all the information that was in the cover letter, but will be easier for the respondent to complete than the cover letter. It will also help the Patent Assignment Branch ensure prompt and proper processing of all patent documents submitted for recording.

Affected public: Any individual or organization applying for a patent.

Frequency: On occasion

Respondent's obligation: Required to obtain a benefit.

OMB desk officer: Maya A. Bernstein (202) 395-3785

Copies of the above information collection proposal can be obtained by calling or writing DOC clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 5327, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Mays A. Bernstein, OMB Desk Officer, room 3235, New Executive Office Building, Washington, DC 20503.

Dated: March 15, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-6620 Filed 3-19-91; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Economic Development Administration

Title: Petition By a Firm for Certification of Eligibility to Apply for Trade Adjustment Assistance

Form number: Agency Form ED-840P;

Type of Request: Extension of the expiration date

Burden: 600 respondents and 4,800 reporting hours. Average hours per response is 8 hours.

Needs and Uses: The form is necessary for producing firms to use in providing to the Trade Adjustment Assistance Division information demonstrating that increased imports are an important cause of its declines in sales and/or production and to the separation or threat of separation of a significant portion of its workers.

Affected public: Business firms which vary in size, including small ones.

Frequency: On occasion

Respondent's obligation: Required to obtain a benefit.

OMB desk officer: Marshall Mills 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: March 15, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-6618 Filed 3-19-91; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Office of the Secretary, Procurement and Administrative Services

Title: Uniform Relocation and Real Property Acquisition for Federal and Federally Assisted Programs

Form number: Agency-NA; OMB #0605-0020

Type of Request: Extension—no change.

Burden: 3 respondents; 6 reporting hours. Average time per response is 2 hours.

Needs and Uses: Under these programs, each Federal agency is required to establish regulations to ensure that persons displaced by the Federal acquisition of their real property are compensated for the acquisition. The paperwork requirement associated with this regulation pertains to the application that must be filled out in order to obtain benefits.

Affected public: Business or other for-profit institutions, non-profit institutions, small businesses or organizations, farms, and individuals or households.

Frequency: On occasion

Respondent's obligation: Required to obtain a benefit.

OMB desk officer: Marshall Mills 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: March 15, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-6619 Filed 3-19-91; 8:45 am]

BILLING CODE 3510-CW-M

Bureau of Export Administration

[Docket No. 910363-1063]

Prepreg Production Equipment; National Security Override Negotiations

AGENCY: Office of Foreign Availability, Bureau of Export Administration, Commerce.

ACTION: Notice of the completion of negotiations to eliminate the foreign availability of prepreg production equipment.

SUMMARY: This notice advises that negotiations conducted pursuant to

section 5(f) of the Export Administration Act of 1979, as amended (EAA), and section 791 of the Ear have been partially successful and have eliminated the availability from foreign countries to controlled countries of hot melt prepreg production equipment. The negotiations have not eliminated the availability from foreign countries to controlled countries of prepreg production equipment designed to use a solvent coating method.

The export of prepreg production equipment is controlled under the EAR for national security and foreign policy reasons. The export of prepreg production equipment designed to use a solvent coating method will no longer be subject to licensing requirements for national security purposes, but will remain under control for foreign policy reasons. A rulemaking change to this effect will be published as soon as possible.

FOR FURTHER INFORMATION CONTACT: Lisa Gimelli Hilliard, Office of Foreign Availability, U.S. Department of Commerce, Washington, DC 20230, Telephone: (202) 377–8074.

SUPPLEMENTARY INFORMATION: Although the Export Administration Act (EAA) expired on September 30, 1990, the President invoked the International Emergency Economic Powers Act and continued in effect, to the extent permitted by law, the provisions of the EAA and the Export Administration Regulations (EAR) in Executive Order 12730 of September 30, 1990.

Part 791 of the Export Administration Regulations (EAR) (15 CFR 730 *et seq.*) establishes the foreign availability procedures and criteria for determining the foreign availability of goods and technology whose export is controlled for national security reasons. The Secretary of Commerce or his designee determines whether foreign availability exists.

The Bureau of Export Administration (BXA) maintains the Commodity Control List (CCL), which identifies those items subject to Department of Commerce export controls. BXA may not maintain national security export controls on items for which foreign availability exists unless the President determines that the absence of export controls on the goods or technology would prove detrimental to the national security of the United States. Such a determination is a National Override.

Pursuant to the provisions of section 5 of the EAA and section 791 of the EAR, in any case in which the President decides to retain export controls on an item notwithstanding a determination of foreign availability, the President is to actively pursue negotiations with the source countries for the purpose of eliminating the foreign availability. Initially, the President has six months to pursue the negotiations, and the President can extend the negotiations for an additional 12 months.

On August 18, 1989, the Deputy Assistant Secretary for Export Administrtion made a positive determination of foreign availability for prepreg production equipment, controlled under ECCN 1357A(e) of the Commodity Control List (Supplement No. 1 to 15 CFR 799.1).

On September 15, 1989, notwithstanding the determination of foreign availability, in conformance with the National Security Override provision of the EAA and the EAR, the President determined that the absence of export controls would be detrimental to the national security of the United States, and directed the Secretary of Commerce to maintain controls on prepreg production equipment. The President also directed the Secretary of State, in consultation with the Secretaries of Commerce and Defense, to negotiate with foreign sources for the purpose of eliminating the foreign availability.

As directed, the Secretary of State initiated the negotiations. At the end of the initial six-month period, the Secretary of Commerce certified to Congress that progress had been made, and on March 15, 1990, extended the negotiating period an additional 12 months. The negotiations resulted in a partial elimination of foreign availability with the source countries agreeing to control the hot melt machines.

BXA will make the appropriate changes to the Export Administration Regulations for exports of prepreg production equipment controlled under ECCN 1357(e) of the CCL (Supplement No. 1 to 15 CFR 799.1) as soon as possible.

Dated: March 14, 1991.

Michael P. Galvin,

Assistant Secretary,

[FR Doc. 91–6621 Filed 3–19–91; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF COMMERCE

International Trade Administration

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[Docket No. 901226–1029]

Allocation of Duty-Exemptions for Calendar Year 1991 Among Watch Producers Located in the Virgin Islands and Guam

AGENCY: Import Administration, International Trade Administration, Department of Commerce; and Office of the Secretary, Department of the Interior.

ACTION: Allocation of duty-exemptions for calendar year 1991 among producers located in the Virgin Islands and Guam.

SUMMARY: This action allocates 1991 duty-exemptions for watch producers located in the Virgin Islands and Guam pursuant to Public Law 97–446.

FOR FURTHER INFORMATION CONTACT: Faye Robinson, (202) 377–1660.

SUPPLEMENTARY INFORMATION: Pursuant to Public Law 97–446, the Departments of the Interior and Commerce (the Departments) share responsibility for the allocation of duty exemptions among watch assembly firms in the U.S. insular possessions and the Northern Mariana Islands. In accordance with § 303.3(a) of the regulations (15 CFR part 303), we have established for 1991 a total quantity of 6,200,000 units of watches and watch movements which may be entered free of duty from the insular possessions and the Northern Mariana Islands. Of this amount, 4,200,000 units may be allocated to Virgin Islands producers, 1,000,000 to Guam producers 500,000 to American Samoa producers and 500,000 to Northern Mariana Islands producers (56 FR 9621).

The criteria for the calculation of the 1991 duty-exemption allocations among insular producers are set forth in § 303.14 of the regulations.

The Departments have verified the data submitted on application form ITA–334P by producers in the territories and inspected the current operations of all producers in accordance with § 303.5 of the regulations.

The verification established that in calendar year 1990 the Virgin Islands watch assembly firms shipped 2,196,495 watches and watch movements into the

customs territory of the United States under Public Law 97–446. The dollar amount of creditable corporate income taxes paid by Virgin Islands producers during calendar year 1990 plus the creditable wages paid by the industry during calendar year 1990 to residents of the territory totalled $5,428,330.

There is only one producer in Guam. Publication of the Guam data, accordingly, would disclose competitively sensitive information. The calendar year 1991 Virgin Islands and Guam annual allocations set forth below are based on the data verified by the Departments in the Virgin Islands and Guam. The allocations reflect adjustments made in data supplied on the producers' annual application forms (ITA Form–334P) as a result of the Departments' verification; and reallocation of duty-exemptions which have been voluntarily relinquished by some producers pursuant to § 303.6(b)(2) of the regulations.

The duty-exemption allocations for calendar year 1991 in the Virgin Islands are as follows:

Name of firm	Annual allocation
Belair Quartz, Inc.	500,000
Hampden Watch Co., Inc.	300,000
Master Time Co., Inc.	250,000
Progress Watch Co., Inc.	450,000
Unitime Industries, Inc.	700,000
Tropex, Inc.	500,000
Timex V.I., Inc.	780,000

The duty-exemption allocation for Guam is as follows:

Name of firm	Annual allocation
Timewise Ltd	800,000

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

Stella G. Guerra,

Assistant Secretary, for Territorial and International Affairs.

[FR Doc. 91–6622 Filed 3–19–91; 8:45 am]

BILLING CODES 3510–DS and 4310–93–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 900242–0289]

RIN 0693–AA39

Approval of Federal Information Processing Standards Publication 100–1, Interface Between Data Terminal Equipment (DTE), and Data Circuit-Terminating Equipment (DCE) for Operation With Packet-Switched Data Networks (PSDN), or Between Two DTEs, by Dedicated Circuit

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: The purpose of this notice is to announce that the Secretary of Commerce has approved a revised standard, which will be published as FIPS Publication 100–1, Interface between Data Terminal Equipment (DTE), and Data Circuit-Terminating Equipment (DCE) for Operation with Packet-Switched Data Networks (PSDN), or between Two DTEs, by Dedicated Circuit. This revised standard supersedes FIPS 100/Federal Standard 1041 in its entirely.

SUMMARY: On March 20, 1990, notice was published in the **Federal Register** (55 FR 10276) that a revised Federal Information Processing Standard for Interface between Data Terminal Equipment (DTE), and Data Curcuit-Terminating Equipment (DCE) for Operation with Packet-Switched Data Networks (PSDN), or between Two DTEs, by Dedicated Curcuit, was being proposed for Federal use.

The written comments submitted by interested parties and other material available to the Department relevant to this revised standard were reviewed by NIST. On the basis of this review, NIST recommended that the Secretary approve the revised standard as a Federal Information Processing Standard (FIPS), and prepared a detailed justification document for the Secretary's review in support of that recommendation.

The detailed justification document which was presented to the Secretary is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW, Washington, DC 20230.

This FIPS contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section, which deals with the technical requirements of the standard. Only the announcement section of the standard is provided in this notice.

EFFECTIVE DATE: The provisions of this revised standard are effective in two stages: September 16, 1991, for all items covered in CCITT X.25–1984, ISO 7776–1986, and ISO 8208–1987, and January 1, 1993, for additional items covered in CCITT X.25–1988.

ADDRESSES: Interested parties may purchase copies of this revised standard, including the technical specifications portion, from the National Technical Information Service (NTIS). Specific ordering information from NTIS for this standard is set out in the Where to Obtain Copies Section of the announcement section of the standard.

FOR FURTHER INFORMATION CONTACT: Mr. David Su, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975–6194.

Dated: March 13, 1991.

John W. Lyons,

Director.

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to section 111(d) of the Federal Property and Adminstrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100–235.

1. Name of Standard. Interface between Data Terminal Equipment (DTE) and Data Circuit-Terminating Equipment (DCE) for Operation with Packet-Switched Data Networks (PSDN), or between Two DTEs, by Dedicated Circuit (FIPS 100–1).

2. Category of Standard. Hardward and Software Standards, Computer Network Protocols.

3. Explanation. This Federal Information Processing Standard (FIPS) specifies the interface between data terminating equipment (DTE) such as automated data processing (ADP) equipment and telecommunication system terminal equipment, and data circuit-terminating equipment (DCE) for operation in the packet mode on packet-switched data networks (PSDN), or between two DTEs, by dedicated circuit. This revised standard adopts American National Standard ANSI X3.100–1989 which in turn adopts CCITT Recommendation X.25–1988 developed by the Consultative Committee on International Telephone and Telegraph, and ISO 7776–1986 and ISO 8208–1987 developed by the International Organization for Standardization. This revision supersedes FIPS 100/FED–STD 1041. More detailed specifications on the applicable interface points for this standard in an Integrated Services Digital Network (ISDN) environment

will be developed for a future FIPS for ISDN.

4. Approving Authority. Secretary of Commerce.

5. Maintenance Agency. U.S. Department of Commerce, National Institution of Standards and Technology, Computer Systems Laboratory.

6. Cross Index.

a. American National Standard (ANSI) X3.100–1989, Interface between Data Terminal Equipment (DTE) and Data Circuit-Terminating Equipment (DCE) for Operationg with Packet-Switched Data Networks (PSDN), or between two DTEs, by Dedicated Circuit.

b. CCITT Recommendation X.25–1988 (CCITT Blue Book), Interface between Data Terminal Equipment (DTE) and Data-Circuit Terminating Equipment (DCE) for Terminals Operating in the Packet Mode and Connected to Public Data Networks by Dedicated Circuit.

c. CCITT Recommendation X.25–1984 (CCITT Blue Book), Interface between Data Terminal Equipment (DTE) and Data-Circuit Terminating Equipment (DCE) for Terminals Operating in the Packet Mode and Connected to Public Data Networks by Dedicated Circuit.

d. International Standard (ISO) 7776–1986, Data Communications—High-Level Link Control Procedures—Description of the X.25 LAPB-Compatible DTE Data Link Procedures.

e. International Standard (ISO) 8208–1987, Data Communications—X.25 Packet Level Protocol for Data Terminal Equipment.

7. Related Documents. Related documents are listed in Section 2, Referenced and Related Standards and Publications, ANSI X3.100–1989.

8. Applicability. The technical specifications of this standard shall be employed in the acquisition, design, and development of all Federal automated processing equipment, services, and telecommunications equipment and PSDN whenever a X.25 DTE/DCE or DTE/DTE interface is required.

9. Implementation. The provisions of this standard are effective in two stages: September 16, 1991, for all items covered in CCITT X.25–1984, ISO 7776–1986, and ISO 8208–1987, and January 1, 1993, for additional items covered in CCITT X.25–1988. Any applicable equipment or service ordered on or after the final effective dates, or procurement action for which solicitation documents have not been issued by those dates, must conform to the provisions of this standard unless a waiver has been granted in accordance with the procedures described below.

10. Specifications. Affixed. This standard adopts in whole the American National Standard (ANSI) X3.100–1989, Interface Between Data Terminal Equipment (DTE) and Data Circuit-Terminating Equipment (DCE) for Operation with Packet-Switched Data Networks (PSDN), or Between Two DTEs, by Dedicated Circuit.

11. Waivers. Waiver of this standard is required when a CCITT Recommendation X.25 interface is to be employed and, the interface does not implement all options mandated by this standard.

Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Governmentwise savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: National Institute of Standards and Technology; ATTN: FIPS Waiver Decisions, Technology Building, room B–154; Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the **Federal Register.**

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the Commerce Business Daily as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. 552(b), shall be part of the procurement documentaton and retained by the agency.

12. Where to Obtain Copies. Copies of this publication are for sale by the National Technical Information Service (NTIS), U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specifications document is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 100–1 (FIPSPUB100–1), and title. Payment may be made by check, money order, or NTIS deposit account.

Copies of the CCITT specifications may also be obtained from NTIS:

—CCITT X.25–1988 (CCITT Blue Book), specify PB89–144216 (X.1—X.32), the cost is $66.

—CCITT X.25–1984 (CCITT Red Book), specify PB85–192664 (X.20—X.32), the cost is $28.

Copies of International Standards may be obtained from:

American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018.

[FR Doc. 91–6512 Filed 3–19–91; 8:45 am]
BILLING CODE 3510–CN–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Section 205 Flood Control Study of the Rio Grande de Manati, Barceloneta, Puerto Rico

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers intends to prepare a Draft Environmental Impact Statement on the feasibility of providing flood control along the Rio Grande de Manati in the vicinity of the town of Barceloneta, Puerto Rico. Structural and nonstructural alternatives to alleviate flood damages will be studied.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be answered by: Mr. Michael Dupes, (904) 791–1689,

Environmental Resource Branch, Planning Division, P.O. Box 4970, Jacksonville, Florida 32232–0019.

SUPPLEMENTARY INFORMATION: a. The Rio Grande de Manati feasibility study is being conducted under the authority of section 205 of the Flood Control Act of 1948 as amended. The local sponsor for the study is the Puerto Rico Department of Natural Resources. Several preliminary alternative plans will be evaluated in a Detailed Project Report (DPR). Alternatives include constructing a levee around the town of Barceloneta. Several different levee alignments for both the standard project flood and the 100-year flood are being considered. Levee contruction will require relocating portions of the river located south and east of Barceloneta. Fill will be obtained from a nearby commercial quarry. A no action plan will also be evaluated.

b. *Scoping:* The scoping process will involve Federal, Commonwealth, and local agencies, and other interested persons and organizations. A scoping letter (February 8, 1990) has been sent to interested Federal, Commonwealth, and local agencies requesting their comments and concerns. Any persons and organizations wishing to participate in the scoping process should contact the Corps of Engineers at the above address. Significant issues that are anticipated include concern for wetlands, water quality, agricultural lands, wildlife, fisheries, surface and ground water resources, recreation, and threatened and endangered species. Coordination with the Puerto Rico State Historic Preservation Officer has been initiated. A reconnaissance level cultural resources survey was performed within the study area and identified 11 archeological sites, 6 of which may be eligible for inclusion on the National Register of Historic Places. Additional archeological survey work will also be performed in areas not previously surveyed.

c. Coordination with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service will be accomplished in compliance with section 7 of the Endangered Species Act. Coordination required by applicable Federal and Commonwealth laws and policies will be conducted. Since the project will require the discharge of material into waters of the United States, the discharge will comply with the provisions of section 404 of the Clean Water Act as amended.

d. *DEIS Preparation:* It is estimated that the DEIS will be available to the public in April 1992.

Dated: March 5, 1991.

Mann G. Davis, III,

Assistant Chief, Planning Division.

[FR Doc. 91–6556 Filed 3–19–91; 8:45 am]

BILLING CODE 3710–AJ–M

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Section 205 Flood Control Study of the Rio Anton Ruiz, Punta Santiago, Puerto Rico

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers intends to prepare a Draft Environmental Impact Statement on the feasibility of providing flood control along the Rio Anton Ruiz in the vicinity of Punta Santiago, Puerto Rico. Structural and nonstructural alternatives to alleviate flood damages will be studied.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be answered by: Mr. Michael Dupes, (904) 791–1689, Environmental Resources Branch, Planning Division, P.O. Box 4970, Jacksonville, Florida 32232–0019.

SUPPLEMENTARY INFORMATION: a. The Rio Anton Ruiz feasibility study is being conducted under the authority of Section 205 of the Flood Control Act of 1948 as amended. The local sponsor for the study is the Puerto Rico Department of Natural Resources. Several preliminary alternative plans will be evaluated in a Detailed Project Report (DPR). The alternatives include several different levee alignments for flood protection within the Punta Santiago area. A no action plan will also be evaluated.

b. *Scoping*: The scoping process will involve Federal, Commonwealth, and local agencies, and other interested persons and organizations. A scoping letter (February 6, 1990) has been sent to interested Federal, Commonwealth, and local agencies requesting their comments and concerns. Any persons and organizations wishing to participate in the scoping process should contact the Corps of Engineers at the above address. Significant issues that are anticipated include concern for wetlands, water quality, agricultural lands, wildlife, fisheries, surface and ground water resources, recreation, and threatened and endangered species. Coordination with the Puerto Rico State Historic Preservation Officer has been initiated. A reconnaissance level cultural resouces survey has been performed within the study area. No archeological or historical sites were identified during the survey. As plans develop additional archeological survey work will be performed in areas not previously surveyed that could be affected.

c. Coordination with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service will be accomplished in compliance with section 7 of the Endangered Species Act. Coordination required by applicable Federal and Commonwealth laws and policies will be conducted. Since the project will require the discharge of material into waters of the United States, the discharge will comply with the provisions of section 404 of the Clean Water Act as amended.

d. *DEIS Preparation*: it is estimated that the DEIS will be available to the public in May 1992.

Dated: March 5, 1991.

Mann G. Davis, III,

Assistant Chief, Planning Division.

[FR Doc. 91–6557 Filed 3–19–91; 8:45 am]

BILLING CODE 3710–AJ–M

DELAWARE RIVER BASIN COMMISSION

Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, March 27, 1991 beginning at 2 p.m. in the Goddard Conference Room of its offices at 25 State Police Drive, West Trenton, New Jersey.

An informal conference among the Commissioner and staff will be open for public observation at 10:30 a.m. at the same location and will include discussions of Corps of Engineers' proposals to deepen the navigation channel of the Delaware River and enlarge the Chesapeake and Delaware Canal; Commission interbasin water transfer policy issues; the Commission's annual Water Resources Program; project review filing fee schedule proposal revisions; upper Delaware ice jam project; and Delaware Estuary use attainability proposals.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or section 3.8 of the Compact:

1. Borough of Doylestown D–79–18 CP Renewal 2. An application for the renewal of a ground water withdrawal project to supply up to 8.7 million gallons (mg)/30 days of water to the

applicant's distribution system from Well No. 13. Commission approval on July 24, 1985 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 50 mg/30 days. The project is located in Doylestown Borough, Bucks County, in the Southeastern Pennsylvania Ground Water Projected Area.

2. Douglas Zee T/A Zee Orchards, Inc D–80–33 Renewal 2. An application for the renewal of a ground water withdrawal project to supply up to 26.5 mg/30 days of water to the applicant's agriculture irrigation system from Well No. 1. Commission approval on December 18, 1985 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 26.5 mg/30 days. The project is located in Harrison Township, Gloucester County, New Jersey.

3. Philadelphia Park D–85–72 Renewal. An application for the renewal of a ground water withdrawal project to supply up to 10.6 mg/30 days of water to the applicant's irrigation system from Well Nos. 1–4. Commission approval on December 18, 1985 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 10.6 mg/30 days. The project is located in Bensalem Township, Bucks County, Pennsylvania.

4. Middle Smithfield Township Sewage Treatment Plant D–90–80 CP. A sewage treatment plant (STP) project to expand the existing 0.15 million gallons per day (mgd) Fernwood Resort Complex STP and provide up to 1.0 mgd of high quality secondary treatment capacity. The expanded STP is to provide interim treatment capability for a regional service area. The treated effluent is to discharge via the existing outfall to Bush Kill, approximately 2.3 miles upstream of its confluence with the Delaware River. The project site is located just south of the Bush Kill and north of Route 209, near Shoemakers, in Middle Smithfield Township, Monroe County, Pennsylvania.

5. Borough of Bellmawr D–90–82 CP. An application for approval of a ground water withdrawal project to supply up to 43.2 mg/30 days of water to the applicant's distribution system from existing Well No. 6, and to retain the existing withdrawal limit from all wells of 60 mg/30 days. The project is located in Bellmawr Borough, Camden County, New Jersey.

6. Borough of Fleetwood D–90–84 CP. An application for approval of a ground water withdrawl project to supply up to 2.2 mg/30 days of water to the applicant's distribution system from new Well No. 10, and to retain the existing withdrawal limit from all wells of 13.5 mg/30 days. The project is located in Ruscombmanor Township, Berks County, Pennnsylvania.

7. Elverson Water Company, Inc. D–90–95. An application for approval of a ground water withdrawal project to supply up to 2.6 mg/30 days of water to the applicant's distribution system from new Well No. 1, and the associated diversion of water out of the Delaware River Basin by exportation of watewater. The project is located in Elverson Borough, Chester County, in the Southeastern Pennsylvania Ground Water Projected Area.

8. Standard Chlorine of Delaware, Inc. D–90–96. An application for approval of a ground water withdrawal from the applicant's ground water decontamination system from new Well No. RW–5, and to retain the existing withdrawal limit from all wells of 10.8 mg/30 days. The project is located near Delaware City, New Castle County, Delaware.

9. Downingtown Area Regional Authority D–91–8 CP. A sewage treatment plant (STP) upgrade project that will provide phosphorus removal facilities to the Downingtown Regional Water Pollution Control Center STP, which serves the Borough of Downingtown and portions of Caln, East Caln, Uwchlan, and West Whiteland Townships in Chester County, Pennsylvania. No expansion of the 7.0 mgd treatment capacity is proposed. The STP is located approximately 1,500 feet west of Route 322, just south of Downingtown Borough and is in East Caln Township. The treated effluent will continue to discharge to the East Branch Brandywine Creek.

10. Pennsylvania Department of Environmental Resources—Easton Dam Fish Ladder D–91–10 CP. A project to construct a fish ladder at the existing Easton Dam near the mouth of the Lehigh River. Consisting of 19 interconnected, gradually-elevated chambers on the east bank of the river, the ladder would allow adult American shad at the base of the dam a means to continue their spring spawning run, as well as permit juvenile shad to pass downstream during fall out-migration. Up to 100 cfs of water could be diverted from the impoundment through the ladder. To permit regulation of water flow over the dam, and past the entrance to the ladder, the crest of the dam would be lowered six inches along a 15-foot section adjacent to the ladder, and three small concrete piers would be installed. The project is located in the City of Easton, Northampton County, Pennsylvania.

11. Pennsylvania Department of Environmental Resources—Chain Dam Fish Ladder D–91–12 CP. A project to construct a fish ladder at the existing Chain Dam on the Lehigh River. Consisting of 22 interconnected, gradually-elevated chambers on the north bank of the river, the ladder would allow adult American shad (which, in the future, may congregate at the base of the dam) a means to continue their spring spawning run, as well as permit juvenile shad to pass downstream during fall out-migration. Up to 100 cfs of water could be diverted from the impoundment through the ladder. To permit regulation of water flow over the dam, and past the entrance to the ladder, the crest of the dam would be lowered six inches along a 15-foot section adjacent to the ladder, and three small concrete piers would be installed. The project is located in Palmer Township, Northampton County, Pennsylvania.

12. Chambers Cogeneration Limited Partnership D–91–19. An application for approval of a 250 megawatt pulverized coal-fired cogeneration project that is to provide the duPont Chambers Works (DCW) manufacturing facility with process steam and electrical power. The applicant plans to sell the steam and electric power to the DCW and the electrical power not used by DCW is to be purchased by Atlantic Electric. Water will be withdrawn from an existing intake in the Salem Canal to the applicant's cogeneration project. The proposed cogeneration plant will be located within the DCW property on the east bank of the Delaware River just upstream of the Delaware Memorial Bridge, in Carneys Point Township, Salem County, New Jersey.

* * * * *

Proposed Water Charging Contract for Bucks County. Pursuant to the provisions of the Delaware River Basin Compact, DRBC Resolution No. 71–4 and Section 5–3.2 of Resolution No. 74–6, a contract is proposed between the Delaware River Basin Commission and Bucks County to provide payment for all water withdrawn from the Delaware River for diversion into the East Branch Perkiomen Creek or into the North Branch Neshaminy Creek in connection with the Point Pleasant Pumping Station.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions and Dr. Richard Tortoriello concerning the proposed Bucks County contract. Persons wishing to testify at this hearing

are requested to register with the Secretary prior to the hearing.

Dated: March 12, 1991.

Susan M. Weisman,

Secretary.

[FR Doc. 91–6558 Filed 3–19–91; 8:45 am]

BILLING CODE 6360–01–M

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 90–109–NG]

Catamount Natural Gas, Inc.; Order Granting Authorization To Import and Export Natural Gas

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of an order granting blanket authorization to import and export natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Catamount Natural Gas, Inc., blanket authorization to import and export a combined total of 150 Bcf of natural gas, including liguefied natural gas, over a two-year period commencing with the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 14, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91–6625 Filed 3–19–91; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96–511, 44 U.S.C. 3501 et seq.). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed April 19, 1991. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 586–2171.

SUPPLEMENTARY INFORMATION: The first energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission.
2. FERC–544.
3. 1902–0153.
4. Gas Pipeline Rates: Rate Change (Formal).
5. Extension.
6. On occasion.
7. Mandatory.
8. Business or other for-profit.
9. 74 respondents.
10. 1 response.
11. 4,810 hours per response.
12. 355,940 hours.
13. FERC–544 data collections are required by the Commission to determine whether or not jurisdictional natural gas pipeline rates are "unjust or unreasonable or unjustly discriminatory or unduly preferential." If, after preliminary review, the rate filings are set for formal hearing, the data under FERC–544 are collected.

The second energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission.
2. FERC–547.
3. 1902–0084.
4. Gas Pipeline Rates: Refund Report Requirements.
5. Extension.
6. On occasion.
7. Mandatory.
8. Business or other for-profit.
9. 80 respondents.
10. 2 responses.
11. 75 hours per response.
12. 12,000 hours.
13. FERC–547, Refund Report Requirements are required by the Commission to carry out its refund policy. The Commission uses the data to insure the pass-through to gas customers/consumers of refunds to correct rates charged by jurisdictional companies in excess to NGPA and NGA maximum lawful/just and reasonable prices.

Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. No. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, March 14, 1991.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 91–6624 Filed 3–19–91; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

[Notice 91–10]

Special Research Grant Program; Health Effects Research

AGENCY: Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Health and Environmental Research (OHER) of th Office of Energy Research (ER), U.S. Department of Energy (DOE) hereby announces its interest in receiving

applications for Special Research Grants in support of the Health Effects Research Program. The primary objective of this Program is to develop the information base necessary to identify, understand, anticipate, and if possible, mitigate the health consequences of exposure to energy-related agents (e.g. radiation or chemical). The Program includes molecular and cellular biology, radiological and chemical physics, dosimetry, and development of new instrumentation. It examines radiological and chemical effects at all levels of biology including molecular, cellular, tissue/organ, and whole animals and uses these findings to develop a mechanistic understanding of effects and to predict risk from exposure. The biological resources and the new technologies that are being developed in the Human Genome Program are revolutionizing the ability to detect and quantify genetic damage leading to mutations, tumors and other health endpoints. DOE is seeking applications that exploit these technological advances and new information to understand impacts on humans who are exposed to low-dose radiation and/or toxic chemicals.

LETTER OF INTENT INFORMATION: Potential applicants must first submit a letter of intent consisting of a project title and an abstract describing the research project objectives and method of accomplishment. Letters of intent should be received by April 5, 1991, and should be forwarded to: Dr. David Smith, Health and Environmental Research Division, Office of Health and Environmental Research, ER–72, U.S. Department of Energy, Washington, DC 20585. Telephone and telefax numbers are required to be part of the letter of intent. The letter of intent will be used to determine the number and scope of the proposals being submitted. This will allow DOE to constitute an ad hoc review panel of the appropriate size and composition. After the filing of the letter of intent, applicants will receive an acknowledgement that contains the necessary application forms.

DATES: To permit timely consideration for awards in Fiscal Year 1991, formal applications submitted in response to this notice should be received by 4:30 p.m., E.D.T., May 17, 1991. Due to heightened security concerns, hand delivered applications will not be accepted. At this time, the only acceptable means of delivery will be the U.S. Mail or Federal Express.

ADDRESSES: Formal applications should be forwarded to: U.S. Department of Energy, Office of Energy Research, Division of Acquisition and Assistance Management, ER–64, Mail Stop G–236, Washington, DC 20585, ATTN: Program Notice 91–10. The Federal Express delivery address is: U.S. Department of Energy, Acquisition and Assistance Management Division, ER–64/GTN, 19901 Germantown Road, Germantown, MD 20874.

FOR FURTHER INFORMATION CONTACT: Contact Dr. Davis Smith, Health and Environmental Research Division, ER–72/GTN, U.S. Department of Energy, Washington, DC 20585, (301) 353–5364.

SUPPLEMENTARY INFORMATION: Through this solicitation, DOE plans to support new research in specific areas of interest, which include:

(1) Developing cell-animal experimental systems including transgenic animals and *in vitro/in vivo* models for elucidating genetic, regulatory, and proliferative events in the multi-step process by which normal cells progress to malignant ones. These systems provide the means for coupling cell culture studies to the *in vivo* influences that are relevant to disease progression. DOE is soliciting grant applications that will identify changes in proto-oncogenes, tumor suppressor genes, signal transduction pathways, and cytoskeletal elements. This research is intended to enable discrimination among changes directly induced by the toxic agent, changes that arise as a secondary effect of exposure, and changes not effected by the toxic agent. These systems will also be used to determine how toxicological mechanisms are affected by dose and other factors such as linear energy transfer (LET).

(2) Studying effects of long-term low-dose exposure to radiation and chemcials. For example, experimental data with cultured human cells relative to neutron quality factors and dose reduction factors must be developed. DOE is also requesting research to identify and characterize the early cellular responses to low level exposure, including repair systems and other gene products. Research is also solicited that determines whether (and how) low dose and dose-rate exposures to chemicals and/or radiation alter nervous system development. DOE is interested in receiving grant applications on research that will provide new systems that can be used to study secondary factors, including interactions between noncarcinogenic and carcinogenic agents. These associated cellular and molecular studies are needed to understand the nature by which chemical and/or radiological interactions occur, to determine how one agent might modify the response of an individual to another agent, and to identify combinations that may be of special concern.

It is anticipated that, subject to the availability of funds, approximately $2 million will be avilable for awards during FY 1991–92. Multiple year funding of awards is expected, subject to availability of future appropriated funds. Information about development and submission of applicants, eligibility, limitations, evaluations and selection processes, and other policies and procedures may be found at 10 CFR part 605. The Office of Energy Research (ER), as part of its grant regulations, requires at 10 CFR 605.11(b) that a grantee funded by ER and performing research involving recombinant DNA molecules shall comply with the National Institutes of Health "Guidelines for Research Involving Recombinant DNA Molecules" (51 FR 16958, May 7, 1986), or such later revision of those guidelines as may be published in the **Federal Register**. Application kits and copies of 10 CFR part 605 are available from the same office listed under "Addresses" section of this Notice. Telephone requests may be made by calling (301) 353–5037. Instructions for preparation of an application are included in the application kit. The Catalog of Federal Domestic Assistance Number for this program is 81.049.

Issued in Washington, DC on March 12, 1991.

D.D. Mayhew,

Deputy Director for Management, Office of Energy Research.

[FR Doc. 91–6623 Filed 3–19–91; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. CP91–1520–000 et al.]

Texas Eastern Transmission Corporation, et al.; Natural gas certificate filings

Take notice that the following filings have been made with the Commission:

1. Texas Eastern Transmission Corporation

March 11, 1991.

[Docket No. CP91–1520–000]

Take notice that on March 11, 1991, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas 77252–2521, filed in Docket No. CP91–1520–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the

Natural Gas Act (18 CFR 157.205 and 157.211) for authorization under the blanket certificate issued in Docket No. CP82–535–000, pursuant to section 7(c) of the Natural Gas Act to add delivery points to its existing Rate Schedule FTS–5 service agreements with Northeast Energy Associates (Northeast Energy) and North Jersey Energy Associates (New Jersey Energy), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Texas Eastern proposes to implement that portion of the June 22, 1990, service agreements between Texas Eastern and Northeast Energy and Texas Eastern and North Jersey Energy and Texas Eastern to add ten and one delivery points, respectively, located in New Jersey. Texas Eastern states that no facilities need be constructed to implement the change in service. Texas Eastern states that the proposed change in service would not result in an increase in the contract quantity for each customer. In addition, it is also indicated that the proposed change in service would have no adverse impact on existing customers.

Comment date: April 25, 1991, in accordance with Standard Paragraph G at the end of this notice.

2. Valley Gas Transmission, Inc.; Williams Natural Gas Company; Southern Natural Gas Company; Florida Gas Transmission Company; Columbia Gas Transmission Corporation; Natural Gas Pipeline Company of America

[Docket Nos. CP91–1455–000; CP91–1483–000, CP91–1487–000, CP91–1488–000, CP91–1489–000, CP91–1495–000, CP91–1496–000, CP91–1497–000]

March 11, 1991.

Take notice that Applicants filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued to Applicants pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix A. Applicants' addresses and transportation blanket certificates are shown in the attached appendix B.

Comment date: April 25, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual Mcf	Receipt points [1]	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91–1455–000 (3–5–91)	Citizens Gas Supply Corporation.	4,000 4,000 1,460,000	LA	LA	1–1–91, T–2, Interruptible.	ST91–7073–000, 1–1–91.
CP91–1483–000 (3–6–91)	Oryx Gas Marketing Limited Partnership (Producer).	80,000 80,000 [2] 29,200,000	CO, KS, MO, OK, TX, WY.	KS, MO, OK, TX	1–21–91, ITS–1&2, Interruptible.	ST91–7051–000, 1–21–91.
CP91–1487–000 (3–7–91)	City of Fultondale, Alabama (LDC).	3,198 3,198 1,167,270	OTX, OLA, TX, LA, MS, AL.	AL	1–1–91, FT, Firm	ST91–6356–000, 1–1–91.
CP91–1488–000 (3–7–91)	City of Jasper, Florida (LDC).	281 281 102,565	OTX, OLA, TX, LA, MS, AL.	AL	1.2.91, FT, Firm	ST91–6515–000, 1–3–91.
CP91–1489–000 (3–7–91)	Aristech Chemical Corporation (End-user).	43 32 [3] 8,400	TX	FL	1–1–91, FTS–1, Firm.	ST91–6635–000, 1–1–91.
CP91–1495–000, [4] ST91–6554–000 (3–7–91)	Allied-Signal, Inc. (End-user).	50,075 40,060 18,277,375	KY, WV	VA	1–11–89, FTS, Firm	12–8–90.
CP91–1496–000 (3–7–91)	Allied-Signal, Inc. (End-user).	65,000 52,000 23,725,000	Various	Various	2–6–87, [4] ITS, Interruptible.	ST91–6554–000, 12–8–90.
CP91–1497–000 (3–7–91)	Williams Gas Marketing Company (Marketer).	75,000 35,000 12,775,000	Various	Various	12–29–90, [4] ITS, Interruptible.	ST91–7022–000, 12–30–90.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.
[2] WNG's quantities are in dekatherms.
[3] Florida Gas' quantities are in MMBtu.
[4] As amended.

Applicant's address	Blanket docket
Columbia Gas Transmission Corporation, 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314.	CP86–240–000
Florida Gas Transmission Company, 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188.	CP89–555–000

Applicant's address	Blanket docket
Natural Gas Pipeline Company of America, 701 East 22nd Street, Lombard, Illinois 60148.	CP86–582–000
Southern Natural Gas Company, P.O. Box 2563, Birmingham, Alabama 35202–2563.	CP88–316–000
Valley Gas Transmission, Inc., 1301 McKinney, Suite 700, Houston, Texas 77010.	CP86–171–000

Applicant's address	Blanket docket
Williams Natural Gas Company, P.O. Box 3288, Tulsa, Oklahoma 74101.	CP86–631–000

3. CNG Transmission Corporation

[Docket No. CP88–712–004]

March 11, 1991.

Take notice that on March 1, 1991, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP88–712–004 a petition to amend the order issued July 30, 1990, in Docket Nos. CP88–712–000, *et al.*, 52 FERC 61,112, so as to authorize the relocation of compression facilities authorized for CNG's proposed Lambert Compression Station, in Wetzel County, West Virginia, at or near the West Virginia/Pennsylvania border deleting the proposed Lambert Compressor Station altogether and moving such facilities to CNG's Crayne Compressor Station, Greene County, Pennsylvania, approximately 20 miles north (downstream) of the formerly proposed Lambert site, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

The July 30, 1990, order, authorized the construction and operation of facilities needed to render sales, transportation, and storage services to various cogeneration and local distribution customers in Virginia (VNG project). One of the several certificated facilities in the July 30 order, was a nominal 6000 horsepower compressor unit for installation at the Lambert site. By this proposal, CNG seeks authority to install the certificated 6000 horsepower unit at CNG's Crayne Compressor station.

CNG contends that the Lambert site and CNG's Crayne Compressor Station are relatively close (approximately 20 miles apart), placing the 6000 horsepower compressor unit at either location would satisfy the service requirements of CNG's certificated VNG Project. CNG alleges that the existing Crayne Compressor Station is a preferable location for the following reasons:

(1) The 6000 horsepower compressor unit to be installed for the VNG project is a turbine-drive unit, essentially the same as the unit installed in 1989 at the Crayne Compressor Station. Thus, installing a second 6000 horsepower compressor unit at Crayne increases the operational reliability of CNG's system because both units can be operated and maintained by trained and experienced operators at one location, instead of two locations only 20 miles apart;

(2) The Crayne Compressor Station is a state-of-the-art 6000 horsepower station, constructed during 1989 as part of the Commission approved, open-season, APEC Project, Docket No. CP87–5–002, *et al.*, 47 FERC 61,341 (1989). While CNG owns property at the Lambert site, there are no longer any buildings or significant above-ground facilities at that location. Thus, the Crayne location is a preferable location for an additional 6000 horsepower compressor unit because of the existing buildings, facilities, and operations at that site;

(3) Installation of the 6000 horsepower compressor unit at Crayne would involve less environmental disturbance during construction. This is so because installing this compressor unit at Crayne only involves an addition to the existing compressor building and some additional piping.

(4) Locating the compressor unit at Crayne would also increase the flexibility and efficiency of CNG's system because there would be two 6000 horsepower compressor units at the same location. With both compressor units at Crayne, one unit alone can be operated at a higher load, during non-peak times, which is a more efficient operation than operating two separate compression stations, 20 miles apart, at less than full load.

CNG indicates that there are no other changes to the facilities certificated in Docket Nos. CP88–712–000, *et al.* CNG alleges that there is no change in the estimate of the 6000 horsepower compressor unit due to this proposed amendment to the July 30 order.

Comment date: April 1, 1991, in accordance with Standard Paragraph F at the end of this notice.

4. Florida Gas Transmission Company

[Docket No. CP91–1443–000]

March 11, 1991.

Take notice that on March 4, 1991, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No.CP91–1443–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon transportation service for Amoco Production Company (Amoco) in Baldwin County, Alabama and emergency delivery service for the Utility Board of the City of Foley, Alabama (Utility Board), all as more fully set forth in the application on file with the Commission and open to public inspection.

FGT states that by order issued July 26, 1984, in Docket No. CP84–120–000, FGT was authorized to acquire and operate Amoco's Foley Pipeline in Baldwin County, Alabama, transport gas for Amoco under Rate Schedule X–24 and to deliver gas to the Utility Board for the account of United Gas Pipe Line Company in the event of an emergency. FGT also states that the transportation service for Amoco was provided to satisfy Amoco's warranty sales obligation to Florida Power and Light Company (FPL).

FGT states that Amoco has not required transportation services under the X–24 Rate Schedule for some time and has determined that it no longer needs capacity on FGT's system for transportation. It is also stated that Amoco's sales obligation to FPL ceased on June 8, 1988, therefore, FGT requests permission to abandon such transportation service. In addition, FGT states that the Utility Board has requested a termination of service, therefore FGT also requests permission to abandon the emergency deliveries to the Utility Board.

Comment date: April 1, 1991, in accordance with Standard Paragraph F at the end of this notice.

5. Northern Natural Gas Company

[Docket Nos. CP91–1436–000; CP91–1437–000; CP91–1438–000; CP91–1439–000; CP91–1440–000; CP91–1441–000]

March 11, 1991

Take notice that on March 4, 1991, Northern Natural Gas Company, 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86–435–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[2]

A summary of each transportation service which includes the shippers identity, the peak day, average day and annual volumes, the receipt point(s), the delivery point(s), the applicable rate schedule, and the docket number and service commencement date of the 120-day automatic authorization under Section 284.223 of the Commission's Regulations is provided in the attached appendix.

Comment date: April 25, 1991, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak day, average, annual	Points of [1]		Start up date, rate schedule	Related [2] dockets
				Receipt	Delivery		
CP91-1436-000 (3-4-91)	Northern Natural Gas Company.	Santanna Natural Corporation.	150,000 112,500 54,750,000	IA, KS, MN, NM, NE, OK, SD, WI, TX.	KS, TX, OK, WI, IA, SD, NM, NE, MI, MN, IL.	1-30-91, IT-1	CP86-435-000, ST91-7076-000
CP91-1437-000 (3-4-91)	Northern Natural Gas Company.	Tenngasco Corporation.	150,000 112,500 54,750,000	IA, KS, MN, NM, NE, OK, SD, WI, TX.	KS, TX	1-29-91, IT-1	CP86-435-000, ST91-7079-000
CP91-1438-000 (3-4-91)	Northern Natural Gas Company.	Enron Gas Marketing, Inc..	32,000 24,000 11,680,000	Offshore TX	TX	2-1-91, FT-1	CP86-435-000, ST91-6998-000
CP91-1439-000 (3-4-91)	Northern Natural Gas Company.	Conoco, Inc.	50,000 37,500 18,250,000	KS, MN, NM, OK, TX.	TX	2-1-91, FT-1	CP86-435-000, ST91-7077-000
CP91-1440-000 (3-4-91)	Northern Natural Gas Company.	Eron Gas Marketing, Inc..	500,000 375,000 182,500,000	IA, KS, MN, NM, NE, OK, SD, WI, TX.	IA, KS, MN, MI, NE, OK, SD, TX, WI,.	2-1-91, IT-1	CP86-435-000, ST91-7078-000
CP91-1441-000 (3-4-91)	Northern Natural Gas Company.	EnTrade Corporation.	20,000 15,000 7,300,000	IA, KS, MN, NM, NE, OK, SD, WI, TX.	IA, TX	2-29-91, IT-1	CP86-435-000 ST91-7026-000

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

6. Northwest Pipeline Corporation

[Docket No. CP91-1490-000]

March 11, 1991.

Take notice that on March 7, 1991, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP91-1490-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to partially abandon existing Warden Meter Station facilities in Grant County, Washington; construct and operate upgraded facilities at the Warden Meter Station for the delivery of additional sales gas to The Washington Water Power Company (Water Power) under Northwest's Rate Schedule ODL-1; reallocate portions of Northwest's maximum daily delivery obligation (MDDO) for ODL-1 sales gas to Water Power from the existing Spokane Mead, Washington delivery point to the Warden delivery point; add the Sharpenberg delivery point at the existing LaCrosse, Washington delivery meter as an ODL-1 sales delivery point to Water Power; and increase the minimum delivery pressure for firm deliveries of gas to Water Power at the existing Spokane, Washington delivery point, all under Northwest's blanket certificate issued in Docket No. CP82-433-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest states that Water Power has requested it to increase firm sales/transportation MDDO at the existing Warden delivery point in Grant County, Washington, from 3,500 therms per day to 15,000 therms per day at a minimum delivery pressure of 150 psig in order to accommodated Water Power's service to a new customer, Washington Potato Company, which will use up to 1,150 MMBtu per day of natural gas. It is stated that in order to effectuate the firm delivery of additional volumes to the Warden delivery point without changing Water Power's total level of ODL-1 sales service, Northwest and Water Power have agreed to reallocate 11,500 therms per day of Water Power's existing MDDO from the existing Spokane Mead delivery point to the Warden delivery point.

Northwest states that it has entered into a letter agreement with Water Power providing for the upgrade of the existing Warden Meter Station in Grand County, Washington, to increase the station's delivery capability consistent with the desired reallocation of MDDO to that point. It is stated that the design capacity of the Warden Meter Station presently is 898 MMBtu per day at 150 psig, but is proposed to be increased to 27,000 MMBtu per day at 150 psig. It is stated that to accomplish the desired increase in capacity, Northwest proposes to replace the existing 2-inch positive displacement meter, 2 one-inch Fisher regulators and associated appurtenances with a 3-inch turbine meter and 2 monitor regulator runs, containing 2 one-inch regulators each, and associated appurtenances. It is stated that the total cost of upgrading the Warden Meter Station is estimated to be $50,000. It is further stated that Northwest will install and pay for the upgraded Warden facilities, since the estimated revenues associated with the incremental load resulting from Water Power's service to the Washington Potato Company exceeds the cost-of-service for the new facilities.

Northwest states that Water Power has requested Northwest to establish a new ODL-1 sales delivery point, the Sharpenberg delivery point, at the LaCrosse, Washington, delivery meter. It is stated that Northwest's service to the Sharpenberg delivery point will be affected within current MDDO for sales deliveries to Water Power at the LaCrosse delivery point. It is further stated that Water Power has estimated that it will provide approximately 1,000 therms per year service to the new residential Sharpenberg delivery point.

Comment date: April 25, 1991, in accordance with Standard Paragraph G at the end of this notice.

7. Transcontinental Gas Pipe Line Corporation; Green Canyon Pipe Line Company

[Docket Nos. CP91-1413-000; CP91-1414-000]

March 11, 1991.

Take notice that Transcontinental Gas Pipe Line Corporation, P.O. Box 1396, Houston, Texas 77251, and Green Canyon Pipe Line Company, P.O. Box 1396, Houston, Texas 77251, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued in Docket No. CP88-328-000 and Docket No. CP89-515-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that are on file with the Commission and open to public inspection.[3]

[3] These prior notice requests are not consolidated.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: April 25, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual dt	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-1413-000 (3-1-91)	Union Pacific Fuels, Inc.... (Marketer).....	450,000 30,000 10,950,000	OTX.....	LA, TX.....	IT, Interruptible	ST91-6336, 12-28-90.
CP91-1414-000 (3-1-91)	Oxy USA Inc. ..... (Producer).....	20,000 20,000 7,300,000	OLA.....	OLA.....	FT, Firm.....	ST91-7082, 1-1-91.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

8. Williams Gas Supply Company, Williams Gas Marketing Company, CNG Trading Company, CNG Producing Company, Kern River Gas Supply Corporation

[Docket Nos. CI87-734-004,[4] CI87-736-006, CI87-811-004, CI88-481-003, CI90-76-001]

March 11, 1991.

Take notice that on March 5, 1991, Kern River Gas Supply Corporation c/o Wright & Talisman, P.C., 1050 17th Street, NW., Suite 1600, Washington, DC 20036 and on March 6, 1991, Williams Gas Supply Company and Williams Gas Marketing Company of P.O. Box 3102, Tulsa, Oklahoma 74101, and CNG Trading Company and CNG Producing Company of 1450 Poydras Street, New Orleans, Louisiana 70112-6000 (Applicants), each filed an application pursuant to §§ 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder to amend their blanket limited-term certificates with pregranted abandonment previously issued by the Commission in Docket Nos. CI87-734-003, CI87-736-003, CI87-811-003, CI88-481-002 and CI90-76-000 for terms expiring March 31, 1991 to extend the term of such authorizations, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

Applications in Docket Nos. CI87-734-004, CI87-736-006, CI87-811-004, CI88-481-003, and CI90-76-001 request extension for an unlimited term. Applicant in Docket No. CI87-736-006 also requests amendment of its blanket certificate to include authorization to make sales for resale of imported gas and interruptible sales service gas (ISS gas) without rate restrictions.

Comment date: March 25, 1991, in accordance with Standard Paragraph J at the end of this notice.

9. The Peoples Natural Gas Company

[Docket No. CP91-1448-000]

March 12, 1991.

Take notice that on March 5, 1991, The Peoples Natural Gas Company (Peoples), 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222, filed in Docket No. CP91-1448-000 an application pursuant to section 7(c) of the Natural Gas Act and § 284.224 of the Commission's Regulations (18 CFR 284.224) for a blanket certificate of public convenience and necessity authorizing the sale, transportation, and assignment of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Peoples requests authority to sell, transport, and assign volumes of natural gas through its distribution facilities in Pennsylvania on a self-implementing basis, on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline to the same extent as intrastate pipelines are authorized to do so under §§ 311 and 312 of the Natural Gas Policy Act of 1978.

Peoples states that it is exempt from the Commission's jurisdiction as a local distribution company under Section 1(c) of the Natural Gas Act.

Comment date: April 2, 1991, in accordance with Standard Paragraph F at the end of the notice.

10. Stingray Pipeline Company, Stingray Pipeline Company, Natural Gas Pipeline Company of America, Natural Gas Pipeline Company of America, Natural Gas Pipeline Company of America

[Docket Nos. CP91-1461-000 [5], CP91-1462-000, CP91-1463-000, CP91-1464-000, CP91-1465-000]

March 12, 1991.

Take notice that on March 6, 1991, Applicants filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport natural gas on behalf of various shippers under their respective blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the identity of the shipper, the date of the transportation service agreement between the Applicant and the respective shipper, the reference number of the transportation service agreement, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket number and initiation date of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants allege that it would

[4] This notice does not provide for consolidation for hearing of the several matters covered herein.

[5] These prior notice requests are not consolidated.

provide the proposed service for each shipper under an executed transportation service agreement and would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: April 26, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket No. trans. agree. (ref. No.)	Applicant	Shipper name	Peak day,[1] avg, annual	Points of		Start up date, rate schedule, service type	Related [2] dockets
				Receipt	Delivery		
CP91-1461-000 11-5-90 (FP-7294)	Stingray Pipeline Co., 701 East 22nd Street, Lombard, IL 60148.	Enron Gas Marketing, Inc.	25,000 25,000 9,125,000	Off. LA	LA	1-1-91 FTS, firm	RP89-70-000 & Order No. 509, ST91-6650-000.
CP91-1462-000 4-21-89 (IGP-7140)	Stingray Pipeline Co.	Reliance Gas Marketing Company.	30,000 15,000 5,475,000	LA & Off. TX & LA	LA & Off. TX	1-1-91, ITS, interruptible.	RP89-70-000, Order No. 509, ST91-6620-000.
CP91-1463-000 12-10-90 (FP-2814)	Natural Gas Pipeline Co. of America, 701 East 22nd Street, Lombard, Il 60148.	Clinton Transmission, Inc.	300 300 109,500	TX, OK, KS, & IA	IA, OK, KS, & NE	1-1-91, FTS, firm	CP86-582-000, ST91-6673-000.
CP91-1464-000 11-20-90 (IP-2799)	Natural Gas Pipeline Co. of America.	Amoco Energy Trading Corporation.	50,000 30,000 10,950,000	Existing receipt points.	Existing receipt point.	1-1-91, ITS, interruptible	CP86-582-000, ST91-6670-000.
CP91-1465-000 12-21-90 (IP-2835)	Natural Gas Pipeline Co. of America.	MidCon Marketing Corp.	75,000 40,000 14,600,000	Existing receipt points.	Existing receipt points.	1-1-91 ITS, interruptible.	CP86-682-000 ST91-6671-000

[1] Quantities are shown in MMBtu.
[2] The Order No., CP or RP Docket corresponds to the Applicants' blanket transportation certificate. The ST docket indicates that 120-day transportation service was initiated under Section 284.223(a) of the Commission's Regulations.

11. ANR Pipeline Company, Trunkline Gas Company

[Docket Nos. CP91-1473-000; CP91-1474-000; CP91-1475-000; CP91-1476-000; CP91-1477-000]

March 12, 1991.

Take notice that Applicants filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[6]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commissioner's Regulations, have been provided by Applicants and are summarized in the attached appendix.

[6] These prior notice requests are not consolidated.

Applicants states that each of the proposed services would be provided under an executed transportation agreement, and that Applicants would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: April 26, 1991, in accordance with Standard Paragraph G at the end of this notice.

Applicant: ANR Pipeline Company, 500 Renaissance Center, Detroit, Michigan 48243
Blanket Certificate Issued in Docket No. CP88-532-000

Docket No. (date filed)	Shipper name (type shipper)	Peak day,[1] avg. annual	Points of		Start up date, rate schedule	Related dockets [2]
			Receipt	Delivery		
CP91-1473-000 (03-06-91)	Amoco Energy Trading Corporation.	20,000 20,000 7,300,000	OK, TX, KS	OK	01-11-91, ITS	ST91-6837-000.
CP91-1474-000 (03-06-91)	Mobil Natural Gas Inc. (Marketer).	50,000 50,000 18,250,000	Offshore TX, Offshore LA, LA, OK, KS, TX.	WI	01-09-91, ITS	ST91-6752-000.
CP91-1475-000 (03-06-91)	Hadson Gas Systems, Inc. (Marketer).	50,000 50,000 18,250,000	Offshore LA, Offshore TX, LA, TX.	Offshore-federal LA,	01-10-91, ITS	ST91-6754-000.

[1] Quantities are shown in dth unless otherwise indicated.
[2] If an ST docket is shown, 120-day transportation service was reported in it.

Applicant: Trunkline Gas Company, P.O. Box 1642, Houston, TX 77251-1642
Blanket Certificate Issued in Docket No. CP86-586-000

Docket No. (date filed)	Shipper name (type shipper)	Peak day,[3] avg. annual	Points of		Start up date, rate schedule	Related dockets [2]
			Receipt	Delivery		
CP91-1476-000 (03-06-91)	Philbro Distributors Corporation (Marketer).	100,000 100,000 36,500,000	Offshore TX, Offshore LA	Offshore TX	12-07-91, PT	ST91-6257-000.
CP91-1477-000 (03-06-91)	Panhandle Company (Marketer).	100,000 100,000 36,500,000	Offshore TX, Offshore LA, IL, LA, TN, TX.	LA	12-08-91, PT	ST91-6259-000.

[3] Quantities are shown in Mcf unless otherwise indicated.

12. Texas Gas Transmission Corporation

[Docket Nos. CP91-1457-000; CP91-1458-000; CP91-1459-000; CP91-1460-000]

March 12, 1991.

Take notice that on March 6, 1991, Texas Gas Transmission Corporation (Applicant), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in the above referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP88-686-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[7]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: April 26, 1991, in accordance with Standard Paragraph G at the end of this notice.

[7] These prior notice requests are not consolidated.

Docket Number [1] (Date Filed)	Shipper Name	Peak Day [2] Average Day, Annual	Receipt [3] Points	Delivery Points	Start Up Date, Rate Schedule Service Type	Related Docket, Contract Date
CP91-1457-000, (3-06-91)	Olin Corporation	2,500 2,500 900,000	LA, IN, KY, TX, TN, IL, OTX, OLA, AR, OH.	KY	2-01-91 FT Firm	ST91-6879-000, 12-12-90.
CP91-1458-000, (3-06-91)	Riverside Energy Resources, Inc	80,000 80,000 5,600,000	LA, IN, KY, TX, TN, IL, OTX, OLA, AR, OH.	LA	1-31-91 IT Interruptible	ST91-6881-000, 1-09-91.
CP91-1459-000, (3-06-91)	Tennessee Valley Authority	250,000 18,000 6,570,000	LA, IN, KY, TX, TN, IL, OTX, OLA, AR, OH.	KY	2-06-91 IT Interruptible	ST91-6880-000, 10-25-90.
CP91-1460-000, (3-06-91)	Bishop Pipeline Corporation	20,000 10,000 7,300,000	LA, IN, KY, TX, TN, IL, OTX, OLA, AR, OH.	KY	2-01-91 IT Interruptible	ST91-6884-000, 1-23-91.

[1] If an ST docket is shown, 120-day transportation service was reported in it.
[2] Quantities are shown in MMBtu.
[3] Offshore Louisiana and offshore Texas are shown as OLA and OTX, respectively.

13. Williston Basin Interstate Pipeline Company

[Docket No. CP91-1502-000]

March 12, 1991.

Take notice that on March 8, 1991, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismark, North Dakota 58501, filed in Docket No. CP91-1502-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon three sales taps and appurtenant facilities located in Yellowstone County, Montana, under Williston Basin's blanket certificate issued in Docket No. CP82-487-000, *et al.* pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is said that the sales taps would be abandoned as a result of the reconstruction of Highway Nos. 310 and 212.

It is further said that Montana-Dakota Utilities Company has advised Williston Basin that it no longer requires service through these taps because its end-use customers would now receive service through extensions of Montana-Dakota's distribution gas lines.

Comment date: April 26, 1991, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a

proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Standard Paragraph

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 91-6524 Filed 3-19-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-4-16-000]

National Fuel Gas Supply Corp; Proposed Changes in FERC Gas Tariff

March 13, 1991.

Take notice that on March 8, 1991, National Fuel Gas Supply Corporation ("National") tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective on April 8, 1991.

Second Revised Sheet No. 115
Second Revised Sheet No. 116
Second Revised Sheet No. 117
Second Revised Sheet No. 118

National states that the purpose of this filing is to update the amount of take-or-pay charges approved by the Federal Energy Regulatory Commission to be billed to National by its pipeline-suppliers and to be recovered by National by operation of section 20 of the General Terms and Conditions to National's FERC Gas Tariff, Second Revised Volume No. 1. National also states that the revised take-or-pay charges are the result of revised allocation methods imposed by its pipeline-suppliers in response to the Commission's Order No. 528. National further states that its pipeline-supplies which have received approval to fill revised take-or-pay charges, as reflected in National's filing herein, are: Columbia Gas Transmission Corporation, CNG Transmission Corporation, and Texas Eastern Transmission Corporation.

National states that copies of the filing were served on National's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 or 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214. All such motions to intervene or protests should be filed on or before March 20, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-6528 Filed 3-19-91; 8:45am]

BILLING CODE 6717-01-M

[Docket No. RP86-136-017]

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff;

March 13, 1991.

Take notice that on March 8, 1991, National Fuel Gas Supply Corporation ("National") tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective on June 1, 1991:

First Revised Sheet No. 1.
First Revised Sheet No. 2.
Second Revised Sheet No. 6.
First Revised Sheet No. 50.
First Revised Sheet No. 289.

National states that the purpose of this filing is to comply with the Federal Energy Regulatory Commission's ("Commission") February 21, 1991, order requiring National to cancel its Rate Schedule T-1 rate.

National states that a copy of the filing were served on National's jurisdiction customers and on the interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214. All such protests should be filed on or before March 20, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-6529 Filed 3-19-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-1281-009]

Natural Gas Pipeline Co. of America; Changes in FERC Gas Tariff

March 13, 1991.

Take notice that on February 22, 1991, Natural Gas Pipeline Company of

America (Natural) tendered for filing the tariff sheets listed in Exhibit A to be a part of its FERC Gas Tariff to be effective on their indicated effective dates.

Natural states that the tariff sheets are sumbitted in compliance with the Commission's order issued January 23, 1991, at Docket No. CP89–1281–006. The tariff sheets listed in Exhibit A, in conjunction with these previously accepted by Commission order issued January 23, 1991, at Docket No CP89–1281–006, are necessary to confirm Natural's Tariff with the provisions of Natural's approved Gas Inventory Demand Charge (GIDC) Stipulation and Agreement at Docket No. CP89–1281 and its Reply Comments submitted in the GIDC proceeding.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective on their indicated effective dates. Natural states that the requested effective dates are consistent with the authorization granted in the order issued January 23, 1991, at Docket No. CP81–1281–006 and Natural's currently effective tariff provisions.

National states that a copy of this filing is being mailed to Natural's jurisdictional customers, interested state regulatory agencies, and all parties set out on the official service lists at Docket Nos. CP89–1281–000 and TA90–1–26–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214. All such protests should be filed on or before March 20, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceedings need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–6527 Filed 3–19–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP88–228–000, *et al.* CP89–470–000 and RP91–29–000]

Tennessee Gas Pipeline Co.; Settlement Working Group Meeting

March 13, 1991.

Take notice that an informal conference will be convened in these proceedings on Monday, March 25, 1991 at 2 p.m., Wednesday, March 26, 1991 at 10 a.m. and Thursday, March 27, 1991 at 10 a.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, 20426 for the purpose of exploring the possible settlement of the above-referenced dockets.

The settlement conference is intended for the limited number of designated representatives of the working groups established by the parties to these proceedings. Representatives of any parties, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), other than the designated working group representatives, desiring to attend should contact Staff counsel prior to the conference. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214). For additional information, please contact Dennis H. Melvin (202) 208–0042 or Hollis J. Alpert (202) 208–1093.

Lois D. Cashell,

Secretary.

[FR Doc. 91–6526 Filed 3–19–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–68–033]

Transcontinental Gas Pipe Line Corp; Interim Service Fee

March 13, 1991.

Take notice that on March 1, 1991, Transcontinental Gas Pipe Line Corporation (Transco), filed with the Federal Energy Regulatory Commission a restatement of its Interim Service Fee under the August 7, 1989 settlement in Docket Nos. RP88–68, *et al.* for the period commencing April 1, 1991.

Transco states that under Ordering Paragraph (C) of the Commission's September 29, 1989 order approving the referenced Settlement, Transcontinental Gas Pipe Line Corporation, 48 FERC ¶ 61,399 (1989), Transco is authorized to rollover its current sales service under the Settlement until March 31, 1992. Transco further states that it and its sales customers have agreed to such a rollover of sales service and that the instant filing is required in order to restate the Interim Service Fee under the rollover sales service. Transco maintains that the calculation of the Interim Service Fee has been done in accord with the procedures identified in Attachment J to the referenced Settlement, and that the customer sales entitlements used in the Attachment J calculations are those sales entitlements agreed to in the context of the pending September 17, 1990 firm sales (FS) service settlment in Docket No. CP88–391.

Transco submits that the Interim Service Fee stated herein for the rollover IFS service is for the period of April 1, 1991 through the earlier of September 30, 1991 or the effective date of Transco's long-term sales service currently pending before the Commission in the Docket No. CP88–391 settlement. Transco asserts that pursuant to the terms of Attachment J, the Interim Service Fee will need to be restated for the period commencing October 1, 1991 if the rollover sales service continues past September 30, 1991.

Transco states that the non-confidential parts of this filing have been filed with the Commission's Secretary. Transco requests that the Commission approve the instant filing for effectiveness commencing April 1, 1991.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214. All such protests should be filed on or before March 20, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–6525 Filed 3–19–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. QF91–61–000, et al.]

Cabot Power Corporation, et al.; Electric rate, Small power production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Cabot Power Corporation

[Docket No. QF91-61-000]

March 11, 1991.

On February 26, 1991, Cabot Power Corporation tendered for filing an amendment to its filing in this docket.

The amendment clarifies certain aspects of the ownership organizational structure of the Applicant.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

2. Allegheny Power System

[Docket No. ER91-290-000]

March 12, 1991.

Take notice that on February 27, 1991, Allegheny Power System tendered for filing on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Company Supplement No. 1 to an initial rate filing in this docket for standard transmission service.

Comment date: March 27, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. PacifiCorp Electric Operators

[Docket No. ER91-295-000]

March 12, 1991.

Take notice that on March 4, 1991 PacifiCorp Electric Operations (PacifiCorp) tendered for filing, in accordance with the Commission's Rules and Regulations, a Third Amendment to an Interconnection Agreement (Amendment) with Sierra Pacific Power Company.

PacifiCorp requests that a waiver of prior notice be granted and that the rate schedule become effective on May 1, 1991, corresponding to the commencement of service under the Amendment.

Copies of this filing have been supplied to Sierra Pacific Power Company, the Public Service Commission of Nevada and the Public Utility Commission of Oregon.

Comment date: March 28, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. Interstate Power Company

[Docket No. ER91-299-000]

March 12, 1991.

Take notice that on March 5, 1991, Interstate Power Company (Interstate) tendered for filing Amendment No. 1 to the Electric Service Agreement between the Public Utilities Commission of the City of Springfield, Minnesota and Company. Interstate states that this Agreement provides for an extension of the contract.

Comment date: March 27, 1991, in accordance with Standard Paragraph E at the end of this notice.

5. Montaup Electric Company

[Docket No. ER91-300-000]

March 12, 1991.

Take notice that on March 6, 1991, Montaup Electric Company ("Montaup" or "the Company") tendered for filing a rate schedule providing for a new M-13 for its all requirements service to two customers, Eastern Edison Company (Eastern Edison) in Massachusetts and Blackstone Valley Electric Company ("Blackstone") in Rhode Island and its contract demand service to three customers, the Town of Middleborough in Massachusetts and Newport Electric Corporation and the Pascoag Fire District in Rhode Island.

The M-13 rate changes are incorporated in (1) revised sheets Nos. 4 and 6 of Montaup's FERC Original Volume No. 1 for service to Eastern Edison and Blackstone and (2) in revised exhibits to agreements under which Montaup serves Middleborough (FERC Rate Schedule No. 75), Newport Electric Corporation (FERC Rate Schedule No. 76) and Pascoag (FERC Rate Schedule No. 64). Based on a test period beginning January 1, 1991, the filing would increase the Company's revenues by $10.5 million or by 3.3% above reveneues under the M-12 rate now in effect.

Montaup states that as a result of an unanticipated decline in demands as reflected in Montaup's forecast for Period II and beyond, Montaup's M-12 rate is failing by a wide margin to enable Montaup to earn its full cost of common equity. Montaup requests that the increase be made effective 60 days from today, on May 5, 1991 and requests that the increase be suspended for one day.

The filing includes a revision to the agreement under which Montaup rents certain transformers and substation facilities to Eastern Edison, designated FERC Rate Schedule No. 58. This agreement contains provisions for updating annually (using actual figures for the preceding year) plant, operating and other costs. Under the agreement, changes in return on common equity and depreciation rate must be filed with this Commission. In accordance with this agreement, Montaup is tendering for filing revisions to provide for changes in captial structure and costs, including a 13.5% return on common equity.

Housekeeping changes have been made to eliminate the M-12 refund credit provision and test power provision, neither of which is needed.

The filing has been served on the state commissions and Attorneys General in Massachusetts and Rhode Island and on Montaup's M-rate customers.

Comment date: March 27, 1991, in accordance with Standard Paragraph E at the end of this notice.

6. Montaup Electric Company

[Docket No. ER 91-301-000]

March 12, 1991.

Take notice that on March 6, 1991, Montaup Electric Company (Montaup) and Newport Electric Company ("Newport") tendered for filing a rate schedule to allocate between themselves energy savings resulting from Montaup's affiliation with Newport. Montaup also included in this filing rate schedule revisions to pass Montaup's share of the savings through to its M-rate wholesale customers.

Montaup is the bulk entity for the Eastern Utilities Associates ("EUA") System, providing all requirements service at its M-series wholesale rate to its affiliates Eastern Edison Company and Blackstone Valley Electric Company and contract demand service at that rate to the Town of Middleborough, Massachusetts, the Pascoag, Rhode Island, Fire District and Newport. Newport was acquired by EUA on March 27, 1990.

On May 1, 1990 the New England Pool (NEPOOL) began treating Montaup and Newport as a single NEPOOL Participant in determining the energy cost responsibility of each NEPOOL Participant. In NEPOOL, all generation owned by all Participants is centrally dispatched. The energy cost responsibility of each Participants determined based on a hypothetical "own-load" dispatch as of each Participant's generation and purchases were dispatched separately to meet its own load. Combining Newport's generation and purchases (which includes high energy cost generating capacity) with Montaup's (which is rich in low energy cost base generating capacity) in a single dispatch results in a more efficient generation mix and lower total energy costs than if Montaup's and Newport's generation and purchases were dispatched separately. Newport and Montaup therefore propose in their filing to share the savings in proportion to their respective net generation and purchases. Montaup's share will be passed through to its M-rate customers as a reduction in fuel adjustment clause billings. The filing is requested to become effective on May 1, 1990.

Comment date: March 27, 1991, in accordance with Standard Paragraph E at the end of this notice.

7. Pennsylvania Electric Company

[Docket No. ER91–281–000]

March 12, 1991.

Take notice that on February 26, 1991, Pennsylvania Electric Company (Penelec) failed an agreement for delivery from the New York-Pennsylvania State line to the Borough of Berlin of the Borough's allocation of electric power and energy from the New York Power Authority's Niagara and St. Lawrence Projects. The delivery of electric power and energy will result in a net decrease in annual revenues to Penelec of $58,800.

Comment date: March 27, 1991, in accordance with Standard Paragraph E end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–6523 Filed 3–19–91; 8:45 am]

BILING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[AMS–FRL–3914–8]

Air Pollution Control; Motor Vehicle Emission Factors—Public Workshop

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public workshop.

SUMMARY: On Tuesday, April 2, 1991, the EPA will hold a public workshop regarding revisions to the highway vehicle emission factor model (MOBILE4) and the guidance on forecasting vehicle miles traveled (VMT). The purposes of this workshop are to present an overview of the revisions planned to the model and the results of analyses completed or in progress in terms of changes in the modeled emission factors, to present and discuss EPA's draft VMT projection guidance, and to provide an opportunity for comment on EPA's presentations before release of a revised version of the model (MOBILE4.1) and the VMT guidance in May 1991.

DATES: The workshop is scheduled for Tuesday, April 2, 1991, from 9 a.m. to 5 p.m. (EST).

ADDRESSES: Ann Arbor Regent Hotel, 3600 Plymouth Road (at US–23), Ann Arbor, MI 48105. Telephone: (313) 769–9800.

FOR FURTHER INFORMATION CONTACT: Mr. Terry P. Newell, Test and Evaluation Branch, U.S. EPA Motor Vehicle Emission Laboratory, 2565 Plymouth Road, Ann Arbor, MI 48105. Telephone: (313) 668–4462, FTS 374–8462.

SUPPLEMENTARY INFORMATION: Section 130 of the Clean Air Act (CAA), as amended by the CAA Amendments of 1990, requires EPA to "review and, if necessary, revise the * * * emission factors used * * * to estimate the quantity of emissions of carbon monoxide, volatile organic compounds, and oxides of nitrogen from sources of such air pollutants * * * including mobile sources." EPA's estimates of highway vehicle emission factors are developed using the MOBILE4 computer program (released in 1989), which estimates emission factors for eight types of highway vehicles at a range of user-specified conditions (e.g., average speed, ambient temperature). MOBILE4 and previous versions of the emission factor program base the emission factor estimates on emissions test data collected in EPA's Emission Factor Program (EFP) from vehicles randomly recruited from the in-use (privately owned) vehicle population. The section 130 requirements of the CAA will result in the release of a new version of the model, MOBILE4.1, in May 1991.

The first requirement for use of this updated emission factor model will be the preparation of base year (1990) inventories for ozone and CO nonattainment areas, in accordance with the CAA amendments. Given the primary importance of these inventories, which will form the baseline for States' control strategies and requirements, and the relatively short time provided by the Act for an initial revision to the model, EPA has decided to limit revisions to MOBILE4 at this time to those affecting calculation of 1990 emissions. Thus, aspects of the model such as updating basic emission rates and speed correction factors for late-model vehicles on the basis of additional test data are included in the revisions planned, while modeling the effects of new tailpipe standards and other future requirements are not planned for inclusion in MOBILE4.1.

EPA plans to develop and release another revision to the model, which will incorporate the effects of new CAA mandates on future vehicle emission projections, late this year. This approach will allow States to perform the most accurate modeling of base year emissions, which are not affected by any of the CAA's new requirements, and give EPA additional time to develop the best approaches to modeling future requirements and their impacts on emissions.

Section 187(a)(2)(A) of the CAA requires that EPA develop, in consultation with the Secretary of Transportation, guidance to be used in forecasting future annual vehicle miles traveled (VMT). This guidance is due to be published in May 1991. All CO nonattainment areas with design values above 12.7 ppm will be required by section 187 to submit forecasts of VMT for each year until projected attainment of the National Ambient Air Quality Standard (NAAQS) for CO. Such projections are required within two years of the date of enactment. Issues related to VMT projections and EPA's guidance will also be discussed at the workshop.

Given the above, EPA believes that the following subject areas are likely to be discussed at the workshop:

- Update of basic emission rates for 1983 and later light-duty vehicles and trucks, based on additional vehicle test data.
- Revisions to evaporative emission factors, based on additional vehicle test data and on changes in methodology.
- Potential revisions to the speed correction factors, used to estimate emissions at average speeds higher or lower than 19.6 mph, the average speed of the Federal Test Procedure (FTP).
- Potential revisions to the correction factors used to adjust exhaust emissions for different levels of fuel volatility.
- Potential revisions to fleet characterization data (e.g., modeling based on a rolling 25-model-year fleet instead of a 20-model-year fleet).
- Issues concerning the projection of future year VMT and EPA's guidance in this area.

The topics above are not necessarily the only topics to be discussed at the workshop, but do represent areas where analysis is currently underway. Information on additional topics may be made available as handouts at the workshop.

Due to the technical nature of the workshop, attendees should be familiar with the current version of the emission factor model (MOBILE4) and/or issues of VMT estimation and projection to benefit from attending. As with previous emission factor workshops, the tone will be informal and no legal transcript will be prepared.

Written comments and responses to the materials presented at the workshop (or on other aspects of the model) will be accepted at any time, although the deadlines imposed by sections 130 (for completion of revision to the emission factors) and 187 (for VMT guidance to be published) of the CAA means that full consideration of comments received more than two weeks after the workshop may be delayed until after release of MOBILE4.1 and the VMT guidance. Any such comments may then be considered in the context of the next revision to the model, as discussed above, or future revision of the VMT guidance. Comments should be mailed to the information contact listed above.

Dated: March 14, 1991.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 91-6612 Filed 3-19-91; 8:45 am]

BILLING CODE 6560-50-M

[OPP-00300; FRL-3884-8]

Revised Neurotoxicity Test Guidelines for Pesticides; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of revised Neurotoxicity Test Guidelines. These revised Neurotoxicity Test Guidelines are being added to Subdivision F of the Pesticide Assessment Guidelines, which provides guidance for registrants in the conduct of tests to support registration of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). These guidelines will also apply to future testing requirements for industrial chemicals under the Toxic Substances Control Act (TSCA). The Agency has made arrangements for these guidelines to be made available through the U.S. Department of Commerce, National Technical Information Service.

ADDRESSES: Copies of the revised Neurotoxicity Test Guidelines may be obtained through the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, (703) 487-4650. Orders may be placed by telephone to the NTIS Order Desk and charged against a deposit account or American Express, VISA, or MasterCard, or sent by mail with check, money order, or deposit account number. For rush orders, telephone 1-800-336-4700. From Virginia, Canada, or Mexico, call (703) 487-4650. The publication number is PB 91-154617.

FOR FURTHER INFORMATION CONTACT: By mail: William F. Sette, Health Effects Division (H7509C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. In person or by telephone: Rm. 820C, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. (703) 557-4375.

SUPPLEMENTARY INFORMATION: Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) pesticides must be tested for a variety of health effects. Specific data requirements are codified in 40 CFR part 158, and guidelines for the conduct of studies are made available through the National Technical Information Service (NTIS). Under the Toxic Substances Control Act (TSCA), industrial chemical manufacturers may be required by rulemaking to conduct tests for health effects. These guidelines will be applied in future test rules and consent agreements under TSCA.

These revised neurotoxicity guidelines have been reviewed and approved by the FIFRA Scientific Advisory Panel and made available for public comment. The following guidelines are included in the package: (1) Neurotoxicity Screening Battery, including Functional Observational Battery, Motor Activity, and Neuropathology, including an assay for Glial Fibrillary Acidic Protein; (2) Delayed Neurotoxicity of Organophosphorus Substances following Acute and 28-day Exposures, including an assay for Neurotoxic Esterase; (3) Developmental Neurotoxicity Study; (4) Schedule-Controlled Operant Behavior; and (5) Peripheral Nerve Function.

The new revised Neurotoxicity Test Guidelines will significantly improve EPA's ability to identify and characterize potential adverse effects on the nervous system and behavior from exposure to chemicals. Testing for neurotoxic effects is currently required based on case-by-case determinations of potential for neurotoxicity of certain chemical classes and related substances. Availability of these revised guidelines will enhance the ability of pesticide registrants and industrial chemical manufacturers to plan, estimate costs, and design studies that EPA will likely require.

EPA is preparing to issue notices (Data Call-Ins) for certain pesticides currently registered under FIFRA to require neurotoxicity testing using these new guidelines. This subset includes those chemicals which are already known to exhibit neurotoxicity based on credible evidence or could be reasonably expected to exhibit neurotoxicity by virtue of chemical structural characteristics. At the present time, classes of chemicals which generally would meet these criteria include the organophosphates, the carbamates and dithiocarbamates, pyrethroids, organochlorines, and certain fumigants.

Dated: March 13, 1991.

Linda J. Fisher,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 91-6616 Filed 3-19-91; 8:45 am]

BILLING CODE 6560-50-F

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40 CFR Part 142

[FRL-3914-7]

Public Water Supply Supervision Program Revision for the United States Virgin Islands

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that the United States Virgin Islands is revising its approved Public Water Supply Supervision Primacy Program. The US Virgin Islands had adopted drinking water regulations which satisfy the National Primary Drinking Water Regulations (NPDWR) for Synthetic Organic Chemicals; Monitoring for Unregulated Contaminants (VOC) promulgated by EPA on July 8, 1987 (52 FR 25690) with July 1, 1988 correction (53 FR 25108); and the revised NPDWR for Public Notification (PN) promulgated on October 28, 1987 (52 FR 41534) with April 17, 1989 correction; (54 FR 15185).

The USEPA has determined that the US Virgin Islands VOC and PN regulations are no less stringent than the corresponding Federal regulations and that the US Virgin Islands continues to meet all requirements for primary enforcement responsibility as specified in 40 CFR 142.10.

All interested parties, other than Federal Agencies, may request a public hearing. A request for a public hearing must be submitted to the USEPA Regional Administrator at the address shown below within thirty (30) days after the date of the **Federal Register**

Notice. If a substantial request for a public hearing is made within the required thirty day timeframe, a public hearing will be held and a notice will be given in the **Federal Register** and a newspaper of general circulation. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective thirty (30) days after publication of this **Federal Register** Notice.

Any request for a public hearing shall include the following information:

(1) The name, address and telephone number of the individual organization or other entity requesting a hearing;

(2) A brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement on information that the requesting person intends to submit at such hearing;

(3) The signature of the individual making the requests or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: Requests for Public Hearing shall be addressed to: Pedro A. Gelabert, Director, U.S. Environmental Protection Agency, Caribbean Field Office, Office 2A, Podiatry Center Building, 1413 Fernandez Juncos Avenue, Santurce, Puerto Rico 00909.

All documents relating to this determination are available for inspection between the hours of 9 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Government of the Virgin Islands, Department of Planning and Natural Resources, Public Water Supply Supervision Program, Nisky Center, suite 231, St. Thomas, Virgin Islands 00802

and

Building 111, Apartment 114, Watergut Homes, Christiansted, St. Croix, Virgin Islands 00820.

U.S. Environmental Protection Agency, Caribbean Field Office, Office 2A, Podiatry Center Building, 1413 Fernandez Juncos Avenue, Santurce, Puerto Rico 00909.

U.S. Environmental Protection Agency—Region II, Public Water Supply Section, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York 10278.

For further information, you may contact: Jorge Martinez, P.E., Water Management Staff, U.S. Environmental Protection Agency, Caribbean Field Office, Office 2A, Podiatry Center Building, 1413 Fernandez Juncos Avenue, Santurce, Puerto Rico 00909, (809) 729–6951.

Authority: Section 1413 of the Safe Drinking Water Act, as amended, (1086), and 40 CFR 142.10 of the National Primary Drinking Water Regulations.

Dated: March 7, 1991.

Constantine Sidamon-Eristoff,

Regional Administrator, EPA, Region II.

[FR Doc. 91–6613 Filed 3–19–91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Managment and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has sumitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35).

Type: New.

Title: Development of Interim Consensus Standards for Construction in Alluvial Fan Flood Hazard Areas.

Abstract: The questionnaire will survey public officials, scientists, planners, engineers, and dvelopers to determine the natural hazards, development climates, and political settings present in communities with probable alluvial fan flood problems. The results will give FEMA and understanding of the nature and scope of alluvial fan hazards to determine the need for interim construction standards.

Type of Respondents: State and local governments, businesses and other for-profit.

Estimate of Total Annual Reporting and Recordkeeping Burden: 495 Hours.

Number of Respondents: 330.

Estimated Average Burden Hours per Response: 1.5 Hours.

Frequency of Response: One-time.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Office, Linda Borror, (202) 646–2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: The FEMA Clearance Officer at the above address; and to Gary Waxman, (202) 395–7340, Office and Management and Budget, 3235 New Executive Office Building, Washington, DC 20503 within four weeks of this notice.

Dated: March 8, 1991.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 91–6599 Filed 3–19–91; 8:45 am]

BILLING CODE 6718-01-M

[FEMA–895–DR]

Mississippi; Amendment to Notice of Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Mississippi (FEMA–895–DR), dated March 5, 1991, and related determinations.

DATED: March 9, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: The notice of a major disaster for the State of Mississippi, dated March 5, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 5, 1991:

Simpson County for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91–6600 Filed 3–19–91; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Atlantic Container Line AB, et al., Agreement(s) Filed

The Federal Maritime Commission hearby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commision, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for

comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–011160–015.

Title: Agreement 11160.

Parties: Atlantic Container Line AB, Compagnie Generale Maritime (CGM), Orient Overseas Container Line (UK) Ltd., Hapag Lloyd AG, Lykes Bros. Steamship Co., Inc., Nedlloyd Lijnen BV, P&O Containers Limited, Polish Ocean Lines, Sea-Land Service, Inc., Mediterranean Shipping Co., Deppe Linie GmbH & Co.

Synopsis: The proposed amendment would add Evergreen Marine Corp. (Taiwan), Ltd. as a party to the Agreement. The parties have requested a shortened review period.

Agreement No.: 217–011323.

Title: Space Charter Agreement Between Sea-Land Service, Inc. and Ocean Express Lines, Inc.

Parties: Sea-Land Service, Inc., Ocean Express Lines, Inc.

Synopsis: The proposed Agreement would permit the parties to charter space on each other's vessels in the trade between ports in Honduras, Guatemala, Belize, and Nicaragua and ports in Florida and Louisiana.

Dated: March 14, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–6517 Filed 3–19–91; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for the comments are found § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–011160–016.

Title: Agreement 11160.

Parties: Atlantic Container Line AB, Compagnie Generale Maritime (CGM), Orient Overseas Container Line (UK) Ltd., HAPAG Lloyd AG, Lykes Bros. Steamship Co., Inc., Nedlloyd Lijnen BV, P&O Containers Limited, Polish Ocean Lines, Sea-Land Service, Inc., Mediterranean Shipping Co., Deppe Linie GmbH & Co.

Synopsis: The proposed amendment would add DSR/Senator Joint Service as a party to the Agreement. The parties have requested a shortened review peirod.

Dated: March 15, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–6548 Filed 3–19–91; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Compagnie de Suez and Banque Indosuez, Paris, France; Proposal To Act as Futures Commission Merchant With Respect to Stock and Bond Index Futures Contracts

Compagnie de Suez and Banque Indosuez, Paris, France (collectively, "Applicant", have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (the "BHC Act"), and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for prior approval to engage through Indosuez Carr Futures, Inc., Chicago, Illinois ("Company"), in acting as a futures commission merchant by providing execution, clearance, and advisory services with respect to futures and options on futures on broad-based bond and stock indices. These activities would be conducted throughout the United States.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with prior Board approval, engage directly or indirectly in any activities "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto."

A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally so similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229, 1337 (DC Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 FR 806 (1984).

In determining whether an activity meets the second, or proper incident to banking, test of section 4(c)(8), the Board must consider whether the performance of the activity by an affiliate of a holding company "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.

Applicant has applied to act as a futures commission merchant ("FCM") in the provision of execution, clearance, and advisory services with respect to: (a) The FT-SE 100 Equity Index futures contract traded on the London International Financial Futures Exchange; (b) the Nikkei Stock Average futures contract traded on the Singapore International Monetary Exchange; (c) the Tokyo Stock Price Index futures contract traded on the Tokyo Stock Exchange; (d) The Hang Sang Stock Index futures contract traded on the Hong Kong Futures Exchange; (e) the All Ordinaries Share Index futures contract traded on the Sydney Futures Exchange; (f) the New York Stock Exchange Composite Index futures contract traded on the New York Futures Exchange; (g) options on New York Stock Exchange Composite Index futures contracts traded on the New York Futures Exchange; (h) the Value Line (Maxi) Average Stock Index futures contract traded on the Kansas City Board of Tradel; and (i) the Value Line Futures (Mini) Index futures contract traded on the Kansas City Board of Trade. Applicant maintains that the Board has previously approved the execution and clearance of the listed futures contracts and options on futures contracts. Applicant contends that providing investment advice with respect to these futures contracts and options on futures contracts is closely related to banking and a proper incident thereto since the Board has previously approved investment advice with respect to futures contracts and options on futures contracts based on broad-based bond and stock indices. *See, Northern Trust Company*, 74 Federal Reserve Bulletin

502 (1988). Company would conduct its FCM activities in accordance with the limitations of 12 CFR 225.25(b)(18) and (b)(19).

In publishing the proposal for comment, the Board does not take any position on issues raised by the proposal under the BHC Act. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act.

Any views or requests for a hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than April 10, 1991. Any request for a hearing must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented in a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, March 14, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-6574 Filed 3-19-91; 8:45 am]

BILLING CODE 6210-01-F

CoreStates Financial Corp, et al.; Applications To Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 8, 1991.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. CoreStates Financial Corp, Philadelphia, Pennsylvania; to engage *de novo* through Signal Financial Corporation, Pittsburgh, Pennsylvania, in the making, acquiring and servicing of loans and other extensions of credit and associated credit-related insurance activities (all as permitted by applicable state and federal law), previously approved pursuant to §§ 225.25(b)(1) and 225.25(b)(8) of the Board's Regulation Y.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Century South Banks, Inc., Dahlonega, Georgia; to engage *de novo* through Century Processing, Inc., Dahlonega, Georgia, in data processing and transmission services pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 14, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-6575 Filed 3-19-91; 8:45 am]

BILLING CODE 6210-01-F

Kenneth R. and Nancy D. Henderson, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 8, 1991.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Kenneth R. and Nancy D. Henderson, Broomfield, Colorado; to acquire an additional 0.73 percent (totalling 25.63 percent) of the voting shares of Community Bancorp, Inc., Thornton, Colorado, and thereby indirectly acquire Community First National Bank, Northglenn, Colorado.

2. Gregory C. Schneider, Plattsmouth, Nebraska; to acquire an additional 0.3 percent (totalling 33 percent) of the voting shares of Schneider Bancorporation, Plattsmouth, Nebraska, and thereby indirectly acquire Plattsmouth State Bank, Plattsmouth, Nebraska.

3. Laura A. Schneider, Omaha, Nebraska; to acquire an additional 0.2 percent (totalling 27.4 percent) of the voting shares of Schneider Bancorporation, Plattsmouth, Nebraska, and thereby indirectly acquire Plattsmouth State Bank, Plattsmouth, Nebraska.

4. R. David Schneider, Bellevue, Nebraska; to acquire an additional 0.3 percent (totalling 33 percent) of the voting shares of Schneider Bancorporation, Plattsmouth, Nebraska, and thereby indirectly acquire Plattsmouth State Bank, Plattsmouth, Nebraska.

Board of Governors of the Federal Reserve System, March 14, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-6571 Filed 3-19-91; 8:45 am]

BILLING CODE 6210-01-F

Locust Grove Bancshares, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than April 8, 1991.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Locust Grove Bancshares, Inc., Locust Grove, Oklahoma; to acquire 80.5 percent of the voting shares of Lakeside Bank of Salina, Salina, Oklahoma.

Board of Governors of the Federal Reserve System, March 14, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-6572 Filed 3-19-91; 8:45 am]

BILLING CODE 6210-01-F

Mid Am, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 8, 1991.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Mid Am, Inc., Bowling Green, Ohio; to acquire Citizens Federal Savings and Loan Association, Bellefontaine, Ohio, and thereby engage in operating a savings and loan association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 14, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-6573 Filed 3-19-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Meeting

Notice is hereby given of the meeting of the National High Blood Pressure Education Program Coordinating Committee, sponsored by the National Heart, Lung, and Blood Institute on Sunday April 7, 1991, from 12 noon to 3:15 p.m., at the Sheraton Washington Hotel, 2660 Woodley Road, Connecticut Avenue NW., Washington, 20008 (202) 328–2000.

The entire meeting is open to the public. The Coordinating Committee is meeting to define the priorities, activities, and needs of the participating groups in the National High Blood Pressure Education Program. Attendance by the public will be limited to space available.

For the detailed program information, agenda, list of participants, and meeting summary, contact: Dr. Edward J. Roccella, Coordinator, National High Blood Pressure Education Program, Office of Prevention, Education and Control, National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, room 4A05, Bethesda, Maryland 20892, (301) 496–0554.

Dated: March 12, 1991.

William F. Raub,

Acting Director, NIH.

[FR Doc. 91–6610 Filed 3–19–91; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting

Notice is hereby given of the meeting of the National Cholesterol Education Program Coordinating Committee, sponsored by the National Heart, Lung, and Blood Institute on Sunday April 7, 1991, from 3:30 p.m. to 5 p.m., at the Sheraton Washington Hotel, 2660 Woodley Road, Connecticut Avenue NW., Washington, 20008 (202) 328–2000.

The entire meeting is open to the public. The Coordinating Committee is meeting to define the priorities, activities, and needs of the participating groups in the National Cholesterol Education Program. Attendance by the public will be limited to space available.

For the detailed program information, agenda, list of participants, and meeting summary, contact: Dr. James I. Cleeman, Coordinator, National Cholesterol Education Program, Office of

Prevention, Education and Control, National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, room 4A05, Bethesda, Maryland 20892, (301) 496–0554.

Dated: March 12, 1991.

William F. Raub,

Acting Director, NIH.

[FR Doc. 91–6611 Filed 3–19–91; 8:45 am]

BILLING CODE 4140–01–M

National Institute of General Medical Sciences; Meeting

Notice is hereby given of a change in the meeting of the Minority Biomedical Research Support Review Subcommittee, National Institute of General Medical Sciences, March 14 and 15, 1991, Building 31, Conference Room 9, National Institutes of Health, which published in the **Federal Register** on February 25, 1991, (56 FR 7717).

This committee was to have convened at 8:30 a.m. on March 14 and 15, but has been changed to 8:30 a.m. on March 25 and 26, 1991, Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland.

The meeting will be open to the public from 8:30 a.m. to 9:30 a.m. and closed from 9:30 a.m. to 5 p.m. on March 25, and closed from 8:30 a.m. to adjournment on March 26 for the review of grant applications.

Dated: March 15, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91–6760 Filed 3–19–91; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR080–01–6310–12 (G–1–146)]

Salem District Advisory Council; Meeting

SUMMARY: Notice is hereby given in accordance with section 309 of the Federal Land Policy and Management Act of 1976, that a meeting of the Salem District Advisory Council will be held April 24, 1991, at 1 p.m. at the Bureau of Land Management, Salem District Office, 1717 Fabry Road SE., Salem, Oregon.

Agenda for the meeting will include:

1. Input into BLM's 1990's Planning for the Public Lands in Western Oregon Management Situation Analysis.
2. Development of a preferred alternative.

The meeting is open to the public. Anyone wishing to make an oral statement must notify the District Manager at the Salem District Office, 1717 Fabry Road SE., Salem, Oregon 97306 by April 19, 1991. Written comments will also be received for the council's considerations. Summary minutes will be maintained in the district office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

Van W. Manning,

District Manager.

[FR Doc. 91–6555 Filed 3–19–91; 8:45 am]

BILLING CODE 4310–33–M

[WY–010–01–4130–02]

Worland District Multiple Use Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Worland District (Wyoming) Multiple Use Advisory Council.

SUMMARY: This notice provides the schedule and agenda of a meeting of the Worland District Multiple Use Advisory Council.

DATES: Thursday, April 18, 1991, 9 a.m. until 4 p.m.

ADDRESSES: The meeting will be held at the Bureau of Land Management's Worland District Office, 101 South 23rd Street, Worland, Wyoming.

FOR FURTHER INFORMATION CONTACT: George Hollis, Bureau of Land Management, P.O. Box 119, Worland, Wyoming 82401, telephone (307) 347–9871.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include:

1. Opening remarks, introductions;
2. Election of Chairperson and Vice-Chairperson;
3. Review of minutes from the last meeting;
4. Briefing on the Fence Modification Project;
5. Briefing on the Cody Resource Area Record of Decision/Approved Resource Management Plan;
6. Briefing on the Fifteenmile Wild Horse Herd;
7. Review of the status of the Grass Creek Resource Management Plan;
8. Review of the status of the Grass Creek Off-Road Vehicle Environmental Assessment;
9. Briefing on the Bass Enterprises/BLM effort with reserve pits;
10. Review of the status of the Altamont Natural Gas Pipeline project;
11. Briefing on the Animal Damage Control Environmental Assessment;
12. Review of the recommendations and status of the Grass Creek/Cody and Washakie Wilderness Enviornmental Impact Statements;
13. Briefing of the back Country By Ways;
14. Briefing on the status of the Wild and Scenic Rivers Inventory Study and Reporting Process in the Worland District;
15. Review of the status of the Worland District Cave Management Plan;
16. Statements from the public, if any.

The meeting will be open to the public. Interested persons may make oral statements to the Council during the public comment period or may submit written statements for the Council's consideration. Anyone wishing to make an oral statement must notify the Worland District Manager in writing by April 15, 1991.

Dated: March 14, 1991.

Darrell C. Barnes,

District Manager.

[FR Doc. 91–6569 Filed 3–19–91; 8:45 am]

BILLING CODE 4310–22–M

[ES–030–1–4212–18; MIES–042950]

Realty Actions, Sales, Leases, etc.; Michigan

AGENCY: Bureau of Land Management, Interior.

ACTION: Sale of public land in Delta County, Michigan—direct sale.

SUMMARY: The following public land has been found suitable for direct sale under section 3 of the Michigan Public Lands Improvement Act of 1988 (The Act) (102 Stat. 2711; Pub. L. 100–537), at fair market value, less equities presented by an applicant for such conveyance and less the value of any improvements that the applicant or the applicant's predecessors in interest have placed on the land. Such equities may include (but are not limited to): (1) The amount paid for the land by the applicant; (2) longevity of applicant's claim; (3) taxes paid on the land; and (4) other equities as the Secretary of the Interior may determine relevant.

The Act was passed by Congress because it recognized that there were long standing title claims against public land in Michigan that could not be resolved by existing Federal authorities. Therefore, Congress authorized the Secretary of the Interior to resolve these title claims and to recognize the equities of the claimants in such lands.

The public land suitable for direct sale is described as follows:

MIES–042950

T. 40N., R. 18W., Sec. 34, NE¼SW¼, Michigan Meridian, Garden Township, Delta County, Michigan (containing approximately 40 acres);

This public land is being offered by direct sale to the following applicants: John and Viola Lester. The public land will not be offered for sale until at least 30 days after the date of publication of this notice in the **Federal Register.**

The public land described above is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice in the **Federal Register,** whichever occurs first.

It has been determined that this parcel of public land contains no known mineral values. Therefore, the mineral estate may be conveyed pursuant to section 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719). Acceptance of the direct sale offer will quality the purchaser to make application for conveyance of the mineral estate.

It has been confirmed, by a field examination, that this parcel contains a wetland. Consequently, the patent to be issued by the Bureau of Land Management, will contain a covenant that advises the patentee that (1) Both Federal and State regulations prohibit any activity which could alter the vegetation and hydrology in the wetland on the parcel, and (2)

That under those regulations, any activities within wetlands and streams located in Michigan are regulated by both the Michigan Department of Natural Resources and the U.S. Army Corps of Engineers.

The case file concerning this direct sale is available for review at the Milwaukee District Office, Bureau of Land Management, 310 West Wisconsin Avenue, suite 225, Milwaukee, Wisconsin 53203.

DATES: On or before April 19, 1991, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 631, Milwaukee, Wisconsin 53201–0631. In the absence of timely comments, this proposal shall become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Duane Marti, Realty Specialist, Bureau of Land Management, P.O. Box 631, Milwaukee, Wisconsin 53201–0631; telephone number (414) 297–4429 or (FTS) 362–4429.

Gary D. Bauer,

District Manager.

[FR Doc. 91–6182 Filed 3–19–91; 8:45 am]

BILLING CODE 4310–GJ–M

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangerd species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–755737

Applicant: New York Zoological Society, Bronx, NY.

The applicant requests a permit to import one male wild-caught angulated tortoise (*Geochelone yniphora*) from the Jersey Wildlife Preservation Trust, Channel Island, United Kingdom, for breeding purposes. This tortoise was originally confiscated by Madagascan government officials.

PRT–755676

Applicant: Ted Rea, Bryan, TX.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the capitve herd maintaiend by Mr. J.A. Holmes, Fish River Station, Mulberry Grove, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT–755996

Applicant: Exotic Feline Breeding Compound, Inc., Rosamund, CA.

The applicant requests a permit to import two captive born male jaguars (*Panthera onca*) from the Zoological Society Granby, Guebec, Canada, for breeding purposes.

PRT–755126

Applicant: San Deigo Zoo, San Diego, CA.

The applicant requests a permit to import two male captive born pygmy chimpanzees (*Pan paniscus*) from the Frankfurt Zoo, Germany for the purpose of captive propagation.

PRT–756133

Applicant: The Hawthorn Corporation, Grayslake, IL.

The applicant requests a permit to export and reimport one female Asian elephant *(Elephas maximus*), donated to applicant by the Milwaukee County Zoo, for circus performances that will serve to educate the public with regard to the species' ecological role and conservation needs.

PRT–756394

Applicant: Cincinnati Zoo, Cincinnati, OH.

The applicant requests a permit to import one giant Chinese salamander (*Andrias davisdianus*) from the Vancouver Aquarium, Vancouver, British Columbia, Canada, for the purpose of exhibition, research, and propagation.

PRT–755998

Applicant: Harding Lawson Associates, Novato, CA.

The applicant requests a permit to live-trap and release salt marsh harvest mice (*Reithrodontomys raviventris*) in the San Francisco Bay area, California, to determine the presence or absence of said species in proposed development sites.

PRT–754689

Applicant: Gilbert E. Orr, San Martin, CA.

The applicant requests a permit to import a sport-hunted trophy of a male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by Mr. N.B. Pohl, Shenfield, South Africa, for the purpose of enhancement and survival of the species.

PRT–755281

Applicant: Dennis L. Sharp, Champlin, MN.

The applicant requsts a permit to import the personal sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), culled from the captive herd maintained by Mr. K.D. Thomas, Tsolwana Game Reserve, Queenstown, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT–755947

Applicant: Griffith Wildlife Biology, Oceanside, CA.

The applicant requests a permit to capture, handle and band least bell's vireo (*Viero bellii pusillus*) located on U.S. Marine Corps Camp Pendleton and along the Tijuana river in San Diego County, California for scientific research to assess population.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45–4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: 703/358–2281)

Dated: March 14, 1991.

R.K. Robinson,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 91–6534 Filed 3–19–91; 8:45 am]

BILLING CODE 4310–55–M

Decision and Availability of the Record of Decision Document for the Endangered Species Management and Protection Plan, Naval Weapons Station-Seal Beach and Seal Beach National Wildlife Refuge, Orange County, CA

AGENCY: U.S. Department of the Interior, Fish and Wildlife Service (Lead Agency) and U.S. Department of the Navy.

ACTION: Notice of Decision and Notice of Availability of the Record of Decision Document.

SUMMARY: A Record Of Decision (ROD) has been developed by the U.S. Fish and Wildlife Service (Service) and U.S. Navy in compliance with agency decision-making requirements of the National Environmental Policy Act (NEPA) of 1969, as amended. The purpose of this ROD is to document the decision of the Service and Navy (the Agencies) for selection of an alternative for implementing the Endangered Species Management and Protection Plan, Naval Weapons Station-Seal Beach and Seal Beach National Wildlife Refuge (Plan). Alternatives have been fully described and evaluated in the August 1990, Final Environmental Impact Statement (EIS) for this Plan.

Based on review of the alternatives and their environmental consequences described in the Final EIS for the Plan, the decision of the Agencies is to implement the Preferred Alternative. The Preferred Alternative is Alternative E, Expanded Endangered Species Management with Ecosystem Restoration. The selected action entails a phased transition from the interim management actions currently in place, as described in Alternative A, through intermediate actions to a fully implemented expanded endangered species management program. The selected alternative is determined to be the environmentally preferred alternative.

Timing of implementation of specific components of the Plan will occur based on appropriation of funding, and the availability of personnel and other resources. The Plan is designed to maximize the protection and survival of endangered species at the Seal Beach National Wildlife Refuge and Naval Weapons Station-Seal Beach by establishing a range of mechanisms for recognizing, analyzing and responding to changing conditions.

The ROD is designed to: (a) State the Agencies' decision, present the rationale for its selection, and portray its implementation; (b) identify all alternatives considered in reaching the decision, including the environmentally preferable one(s); and (c) state whether all means to avoid or minimize environmental harm from the implementation of the selected alternative have been adopted (40 CFR 1505.2). Additionally, the ROD document and appendices summarize the project background and key issues, provide details of the plan phases, and include the most recent data available for the species of concern. Supplementary information is provided in appendices to this ROD.

ADDRESSES: To obtain a copy of the Record of Decision document with appendices, or for further information on this project, please contact: Mr. Charles J. Houghten, U.S. Fish and Wildlife Service, 2233 Watt Avenue, suite 375, Sacramento, California 95825–0509, telephone (916) 978–4420.

SUPPLEMENTARY INFORMATION:

A. Background

The Seal Beach National Wildlife Refuge (Refuge) consists of 911 acres administered by the U.S. Fish and Wildlife Service (Service). The Refuge overlays a portion of the 5,000-acre Naval Weapons Station-Seal Beach (Station), located adjacent to the City of Seal Beach in northwestern Orange County, California. Comprised almost entirely of coastal salt marsh, the Refuge provides essential habitat for a variety of birds dependent on this very limited and rapidly disappearing habitat in southern California. Since its establishment in 1974, the Refuge has been managed with a principal focus on endangered species. The variety of activities to protect and manage endangered species on the Station have also benefitted other wildlife. Management and protection activities have included salt marsh restoration, habitat enhancement, research, monitoring, and predator control.

The scope of the Seal Beach Environmental Impact Statement (EIS) encompasses a comprehensive plan for endangered species management and protection for the Station and Refuge. The proposed action is the implementation of this plan. The purpose of the proposed action is to maximize opportunities for survival of endangered species, particularly, the California least tern and light-footed clapper rail. These species rely on the salt marsh habitat of the Refuge for nesting, rearing young, and foraging. While the least terns are present only during their breeding season, generally from April-August, the clapper rails are year-round residents of the Refuge. The need for action has resulted from an immediate and serious threat to the survival of the endangered species due to predation and other potential impacts at the Refuge and Station. The predatory red fox, which is not native to coastal southern California, has been a significant concern.

Because of the low numbers of endangered species on the Refuge and throughout their ranges, predation is considered a significant threat to their survival. The presence of red foxes on the Station and Refuge represents a significant threat to terns and rails because they are known as surplus killers and major predators of ground-nesting waterbirds and eggs.

B. Development of the EIS

Public involvement was a principal feature throughout the development of the EIS for the Seal Beach Endangered Species Management and Protection Plan. The EIS process was initiated in November 1988. A Notice of Intent to prepare the EIS was published in the **Federal Register** on January 12, 1989.

Throughout the EIS process, data collection, data synthesis, research and writing of the EIS were ongoing. On May 18, 1990, the Draft EIS was filed with the Environmental Protection Agency (EPA) and a Notice of Availability published in the **Federal Register**. Prior to the official filing date, copies of the Draft EIS were provided to all agencies, groups, and individuals on the EIS mailing list. A Notice of Availability was published in the **Federal Register** and the Final EIS was filed with the EPA on August 31, 1990. Before the official filing date, copies of the Final EIS were provided to agencies, groups, and individuals on the EIS mailing list.

Through public scoping and with input from various public agencies and experts, key issues were identified and organized into five categories. Key issues addressed in the EIS are identified as the effects that implementation of the proposed action would have on: (1) Endangered species and their habitats, (2) predatory mammals and other predators, (3) other wildlife and their habitats, (4) physical factors, and (5) the local community and general public.

C. Alternatives

An initial range of alternatives was reduced to five alternatives for analysis in the EIS. Each alternative has a goal of protecting and managing the endangered species to various degrees on the Refuge and Station. Also, each alternative is defined by different methods or levels of management within each of the following components: (1) Management actions for endangered species, (2) monitoring and researching environmental quality, (3) public use and education, and (4) staff and funding. The five alternative management plans are: (A) Interim Management, (B) No Action, (C) Reduced Management, (D) Expanded Endangered Species Management, and (E) Expanded Endangered Species Management with Ecosystem Restoration. The Preferred Alternative is Alternative E.

D. Decision

1. Selection of the Preferred Alternative

The agencies' decision is to implement the Preferred Alternative, Alternative E, as it is described in the Final EIS for the Endangered Species Management and Protection Plan, Naval Weapons Station-Seal Beach and Seal Beach National Wildlife Refuge. This decision is based on a thorough review by the agencies of the alternatives and their environmental consequences described in the EIS.

The Selected Plan entails a phased transition from interim management actions currently in place, described in Alternative A, through intermediate actions, to a fully implemented expanded endangered species management program with ecosystem restoration as described in Alternative E. It is anticipated that the Selected Plan will provide direction for protection and management of endangered species at the Refuge and Station for at least the next 10 years.

2. Explanation of the Selected Plan

The Selected Plan, Expanded Endangered Species Management with Ecosystem Restoration, is comprised of principal components that include: Species population monitoring; endangered species studies; endangered species protection; predator control; habitat management; habitat restoration and enhancement; monitoring and researching environmental quality; public use and education; and staff and funding. Various components of the Preferred Alternative will be phased in over an approximate 10-year period with implementation based on available staff and funding. An objective of implementing this alternative is to establish a more naturally balanced ecosystem supportive of endangered species and other native wildlife. Details of key plan components are provided in the Record of Decision document and appendices.

E. Rationale for Decision

The decision to select the Preferred Alternative as the action to be implemented as the Endangered Species Management and Protection Plan, Naval Weapons Station-Seal Beach and Seal Beach National Wildlife Refuge is based on consideration of a number of environmental factors and issues.

Implementation of the Preferred Alternative represents the full commitment by the Navy and Service to maximize wildlife values on the Station over time, thus maximizing protection and recovery goals for the endangered species. This action, which will initially be phased in from current (interim) management will require expanded personnel and funding. The Preferred Alternative addresses the need to recognize the connection between upland and wetland habitats, particularly in food web interactions, and the potential for achieving a self-maintaining ecosystem on the Station. This decision represents a commitment to prioritize the development and maintenance of wildlife values to the highest degree possible, while accommodating the primary military mission of the Station. The mandates of the Endangered Species Act would be achieved with the successful implementation of Alternative E.

A number of issues and factors were analyzed during the decision-making process including: Protection of environmental resources and maintaining environmental quality; endangered species issues; predatory mammal issues; other wildlife issues; contaminant issues; relationship to the local community and general public; public input; coordination and consultation with other agencies; public health issues; public use and education; legislative mandates; and costs and benefits. Details of these factors and the rationale for the decision are provided in the Record of Decision document and appendices.

The principal means of providing protection of terms and rails from predatory species, for all phases of the Plan, involve habitat modification and population management measures. All methods used for controlling predators from the Station or Refuge will conform to government regulations and approval subject to U.S. Fish and Wildlife Service and U.S. Department of Agriculture, Animal Damage Control (ADC) guidelines and requirements. A Predator Control Action Index will be established to aid management of predator populations on the Station and Refuge. Species of predators will be controlled based on location, seasonality, and numbers of predator sign or sightings on the Station and Refuge. The type, extent, timing, and duration of control activities for targeted species will be based on this index and on the population status and trends evident for endangered species at the time.

A principal component of the Selected Plan is the expanded role of environmental monitoring and research. Research results will provide guidance for upland habitat restoration and the potential for coyote reintroduction. Habitat restoration conducive to supporting the reintroduction of the native top carnivore coyote, will provide the means for establishment of a more self-sustaining and naturally-functioning ecosystem on the Station and Refuge.

Current and expanded monitoring programs including contaminants investigations will help assure that appropriate knowledge of the Sea Beach ecosystem is obtained. Consequently, management actions will assure the existence of a quality environment for the endangered species and other wildlife. Furthermore, the public will benefit through increased understanding of the environment and increased awareness of important environmental issues. Through implementation of the various actions of the Selected Plan, including wildlife population monitoring, endangered species studies and protection, habitat management, restoration and enhancement, monitoring and researching environmental quality, and improvements to public use and education, environmental harm will be avoided or minimized.

Marvin L. Plenert,

Regional Director.

[FR Doc. 91-6570 Filed 3-19-91; 8:45 am]

BILLING CODE 4310-55-M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-311]

Certain Air Impact Wrenches; Commission Not To Review an Initial Determination Terminating Investigation as to Allegations of False Marking

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 17) issued by the presiding administrative law judge (ALJ) granting with prejudice the joint motion of complainant Ingersoll-Rand and respondents Astro Pneumatic Tool Co. and Kuan-I Gear Company to terminate the above-captioned investigation as to certain allegations of false marking set forth in the complaint.

FOR FURTHER INFORMATION CONTACT: Scott Andersen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1099. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

SUPPLEMENTARY INFORMATION: On January 24, 1991, the presiding ALJ issued an ID granting with prejudice the joint motion of complainant Ingersoll-Rand and respondents Astro Pneumatic Tool Co. and Kuan-I Gear Company to terminate the investigation as to certain allegations of false marking set forth at paragraphs 3.3, 4.3, and 4.4 of the complaint. The ALJ found that the motion should be granted because complainant agreed that respondents had changed the country of origin markings on their Astro-555 air impact tool. No petitions for review of the ID or agency comments were filed.

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000.

Issued: March 12, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–6567 Filed 3–19–91; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 332–308]

Central and Eastern Europe: Export Competitiveness of Major Manufacturing and Services Sectors

AGENCY: International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

SUMMARY: Following receipt on January 30, 1991, of a request from the U.S. Trade Representative (USTR) for an investigation under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), the Commission instituted investigation No. 332–308, Central and Eastern Europe: Export Competitiveness of Major Manufacturing and Services Sectors. As requested by the USTR, the Commission will submit preliminary information as available to USTR by April 1, 1991, and a final report by October 1, 1991. As requested by the USTR, the Commission will provide information in its report relating to the likely export competitiveness of the major manufacturing and services sectors (e.g., textiles and steel) in Central and Eastern Europe (Bulgaria, Czechoslovakia, Hungary, Poland, and Romania), including an assessment of structural impediments affecting these industries (e.g., supply bottlenecks of vital industrial inputs, infrastructure deficiencies, distribution problems, underdeveloped financial and credit institutions and instruments, etc.) that might impede these sectors from reaching their full export potential.

EFFECTIVE DATE: March 12, 1991.

FOR FURTHER INFORMATION CONTACT: Dennis Rudy (202–252–1460) or William Warlick (202–252–1459), Office of Industries, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. For information on the legal aspects of the investigation contact William Gearhart of the mission's Office of the General Counsel (202–252–1091). The media should contact Lisbeth Godley, Acting Director, Office of Public Affairs (202–252–1819). For information on a product basis, contact the appropriate member of the Commission's Office of Industries, as follows:

(1) Agriculture, Fisheries, and Forest Products, Mr. Fred Warren (202–252–1311)
(2) Textiles, Leather Products, and Apparel, Ms. Linda Shelton (202–252–1467)
(3) Energy and Chemicals, Ms. Cynthia Foreso (202–252–1348)
(4) Minerals and Metals, Mr. Charles Yost (202–252–1442)
(5) Machinery and Equipment, Mr. Michael Hagey (202–252–1392)
(6) General Manufactures, Mr. Carl Seastrum (202–252–1493)
(7) Services and Electronic Technology, Mr. Andrew Malison (202–252–1391)

Background

In her letter the USTR made reference to the "dramatic economic and political reforms" of the past year in Eastern Europe. She said that, as part of the U.S. efforts to encourage and facilitate the market-oriented reforms of the Eastern European economies, the United States recently proposed to the OECD that the OECD Trade Committee undertake a study of barriers to trade with Eastern Europe. She said that the OECD study will include an inventory of OECD and newly-industrialized-country tariff and non-tariff barriers to East European exports, analysis of the economic effects of removing or reducing these restrictions, analysis of steps OECD countries could take, and a preliminary analysis of the structural constraints within the East European economies that may inhibit their ability to competitively produce goods and services for the export market. She said that the OECD is planning to organize a seminar with representatives from Eastern Europe in June to discuss, among other subjects, the preliminary results of its study.

Public Hearing and Prehearing Briefs

A public hearing in connection with the investigation will be held in the Commission Hearing Room, 500 E Street SW., Washington, DC 20436, beginning at 9:30 a.m. on July 16, 1991 and continuing on July 17, if necessary. Persons wishing to appear at the public hearing must file a request with the Secretary to the Commission not later than 5:15 p.m., June 28, 1991. Prehearing briefs (an original and 14 copies) should also be filed with the Secretary to the Commission not later than 5:15 p.m., July 9, 1991. Any information which the submitter wishes the Commission to treat as confidential business information must be submitted in accordance with the procedures set forth below under "posthearing briefs and other written submissions."

All persons having an interest in this matter have the right to appear at the hearing, either in person or through counsel, to present information and to be heard. Testimony and briefs should relate only to the areas that the Commission will address in its advice to USTR.

Posthearing Briefs and Other Written Submissions

In lieu of, or in addition to, appearance at the public hearing, interested persons are invited to submit written statements concerning the investigation. Commercial or financial information contained in such statements or in prehearing or posthearing briefs that a submitting party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions

requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. To be assured of consideration by the Commission, all posthearing briefs and other written statements should be submitted at the earliest possibly date, but not later than July 22, 1991. All submissions should be addressed to the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal (202–724–0002).

Issued: March 12, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–6568 Filed 3–19–91; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–303]

Certain Polymer Geogrid Products and Processes Therefor; Change of Commission Investigative Attorney

Notice is hereby given that, as of this date, T. Spence Chubb, Esq., of the Office of Unfair Import Investigations is designated as the Commission investigative attorney in the above-cited investigation instead of Gary M. Hnath, Esq.

The Secretary is requested to publish this Notice in the **Federal Register.**

Dated: March 11, 1991.

Respectfully submitted,

Lynn I. Levine,

Director, Office of Unfair Import Investigations.

[FR Doc. 91–6565 Filed 3–19–91; 8:45 am]

BILLING CODE 7020–02–M

Designation of Additional Commission Investigative Attorney

In the Matter of Certain Scanning Multiple-Beam Equalization Systems for Chest Radiography and Components Thereof.

[Investigation No. 337–TA–326]

Notice is hereby given that, as of this date, Alesia M. Woodworth, Esq., of the Office of Unfair Import Investigations is designated as the Commission investigative attorney in the above-cited investigation instead of Juan S. Cockburn, Esq.

The Secretary is requested to publish this Notice in the **Federal Register.**

Dated: March 11, 1991.

Respectfully submitted,

Lynn I. Levine,

Director, Office of Unfair Import Investigations.

[FR Doc. 91–6566 Filed 3–19–91; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–497 (Preliminary)]

Tungsten Ore Concentrates From the People's Republic of China

Determination

On the basis of the record [1] developed in the subject investigation, the Commission unanimously determines, pursuant to section 733(a) of the Tariff Act of 1930 (18 U.S.C. section 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from the People's Republic of China of tungsten ore concentrates, provided for in subheading 2611.00.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On January 23, 1991, a petition was filed with the Commission and the Department of Commerce by counsel for U.S. Tungsten Corp., Danbury, CT, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of tungsten ore concentrates from the People's Republic of China. Accordingly, effective January 23, 1991, the Commission instituted preliminary antidumping investigation No. 731–TA–497 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of January 20, 1991 (56 FR 3485). The conference was held in Washington, DC, on February 14, 1991, and all persons who requested the opportunity were permitted to appear in person or by counsel. The Commission transmitted its determination in this investigation to the Secretary of Commerce on March 11, 1991. The views of the Commission are contained in USITC Publication 2367 (March 1991), entitled "Tungsten Ore Concentrates from the People's Republic of China: Determination of the Commission in Investigation No. 731–TA–497 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: March 12, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–6563 Filed 3–19–91; 8:45 am]

BILLING CODE 7020–02–M

[1] The record is defined in § 207.2(h) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(h)).

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–52 (Sub-No. 72X)]

The Atchison, Topeka and Santa Fe Railway Co.—Abandonment Exemption—in Reeves County, TX; Exemption

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 14.28-mile line of railroad between milepost 231.48, near Orla, and milepost 217.2, near the Texas-New Mexico State Line, in Reeves County, TX.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on April 19, 1991 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1]

[1] A stay will be routinely issued by the Commission in those proceedings where an

Continued

formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by April 1, 1991.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by April 9, 1991, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Dennis W. Wilson, The Atchison, Topeka and Santa Fe Railway Company, 1700 East Golf Road, Schaumburg, IL 60173–5860.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by March 25, 1991. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: March 4, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–6470 Filed 3–19–91; 8:45 am]

BILLING CODE 7035–01–M

informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

[Docket No. AB–1 (Sub-No. 218)

Chicago and North Western Transportation Co.—Abandonment Between Ingalton and Carol Stream, in DuPage County, IL; Findings

The Commission has found that the public convenience and necessity permit Chicago and North Western Transportation Company to abandon its 5.6-mile line of railroad between MP 31.1 near Ingalton and MP 25.5 near Carol Stream, in DuPage County, IL.

A certificate will be issued authorizing abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served on the applicant on or before April 1, 1991. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be offered again within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Dated: March 12, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Stickland, Jr.,

Secretary.

[FR Doc. 91–6584 Filed 3–19–91; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–22,566]

Calderon Belts and Bags, Inc., New York, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 5, 1989 applicable to all workers of Calderon Belts & Bags, Inc., New York, New York. The notice was published in the **Federal Register** on July 23, 1989 (54 FR 27956).

At the request of the Calderon Division workers of Mutterperl Group, the Department is amending the subject certification to properly reflect the correct working group. New information shows that Calderon Belts & Bags, Inc., New York, New York was purchased on February 10, 1989 by the Mutterperl Group, Ltd., New Bedford, Massachusetts. The Mutterperl Group retained many of the Calderon workers in a separate worker group (Calderon Division) in New York, New York to produce bags and belts. Accrodingly, the Department is correcting the worker group to show this new situation. Further, it is not the Department's intent to certify workers of the Mutterperl Group other than the former Calderon workers who are paid by Mutterperl.

Therefore, the certification is amended to properly reflect the correct worker group. The amended notice applicable to TA–W–22,566 is hereby issued as follows:

All workers of Calderon Belts & Bags, Inc., New York, New York and all former Calderon workers who were paid by the Mutterperl Group and who were engaged in the production of belts and bags or in the support of such production for Mutterperl and who became totally or partially separated from employment on or after February 16, 1988 are eligible to apply for adjustment assistance under Section 223 of th Trade Act of 1974.

Signed at Washington, DC this 12th day of March 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91–6597 Filed 3–19–91; 8:45 am]

BILLING CODE 4510–30–M

Pension and Welfare Benefits Administration

Proposed Class Exemption Relating to Certain Employee Benefit Plan Foreign Exchange Transactions

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed class exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed class exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and from certain taxes imposed by the Internal Revenue Code of 1986 (the Code). If granted, the proposed exemption would permit purchases and sales of foreign currencies between

employee beneift plans and certain banks and their affiliates which are parties in interest with respect to such plans. The proposed exemption, if granted, would affect participants and beneficiaries of employee benefit plans involved in such transactions, as well as banks and their affiliates which act as dealers in foreign exchange.

DATES: Written comments shall be submitted to the Department before May 20, 1991.

ADDRESSES: All written comments (preferably 3 copies) should be sent to: Pension and Welfare Benefits Administration, room N–5649, 200 Constitution Avenue NW., Washington, DC 20210, Attention: Foreign Exchange Class Exemption Proposal. The application for exemption (Application Number D–5700), as well as all comments, will be available for public inspection in the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Pension and Welfare Benefits Administration, Lyssa E. Hall, Office of Exemption Determinations, U.S. Department of Labor, Washington, DC 20210 (202) 523–8971 (not a toll-free number) or Susan E. Rees, Plan Benefits Security Division, Office of the Solicitor, (202) 523–9141 (not a toll-free number).

SUPPLEMENTARY INFORMATION: This document contains a notice of pendency before the Department of a proposed class exemption from the restrictions of section 406(a)(1) (A) through (D) of ERISA and from the taxes imposed by section 4975 (a) and (b) of the Code by reason of certain transactions described in section 4975(c)(1) (A) through (D) of the Code. Exemptive relief for the transactions described herein, as well as for other transactions not covered by the proposed exemption, was requested in an application dated July 18, 1984 (Application No. D–5700) submitted by the American Bankers Association (ABA) pursuant to section 408(a) of ERISA and in accordance with the procedures set forth in ERISA Procedure 75–1.[1]

In a letter to the ABA dated December 28, 1984, the Department tentatively denied the application. By letter dated June 21, 1985, the ABA modified its application in response to the Department's tentative denial, explaining that it was no longer seeking exemptive relief for foreign exchange transactions between banks and plans where the banks or their affiliates have investment management discretion over the plan assets involved in the transactions. On September 15, 1986, the Department published a notice in the **Federal Register** (51 FR 32695), requesting additional information from the public on various issues being considered by the Department in deciding whether to proposes a foreign exchange class exemption in response to the ABA application. The comment period ended on February 24, 1987.

Discussion of the Application

A. Summary of Facts and Representations

The application contains facts and representations with regard to the requested exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

According to the applicant, U.S. employee benefit plan assets are being increasingly invested in foreign securities in order to increase diversification and to take advantage of opportunities for higher returns. For the most part, these investments consist of securities issued by foreign issuers which are denominated and traded in currencies other than the United States dollar. U.S. plans require access to facilities for the purchase and sale of foreign currencies because the ability to buy and sell foreign currency is vital to their participation in international securities markets and to the acquisition, holding and disposition of foreign assets. U.S. banks, which are members of the ABA, are the predominant source of foreign currencies for U.S. investors, including employee benefit plans, which invest in foreign securities. In many cases, these same banks, either directly or through their agents, serve as trustees, custodians or subcustodians with respect to the safekeeping of such assets abroad in accordance with the Department's regulations under ERISA section 404(b).

The foreign exchange market [2] is maintained primarily among larger banks, as well as money market brokers and dealers, located in major financial centers around the world. Such banks, dealing generally as principals and from inventories maintained by them in one or more foreign currencies, are a major factor in the global market within which international investors and businesses obtain needed foreign currencies. Transactions among those entities (referred to in the ABA application as "interbank transactions") typically determine, in the aggregate, the market for particular foreign currencies and generally occur in relatively large amounts, *e.g.*, in excess of $2,000,000 (or its foreign currency equivalent). There is no single established market price for a given currency at any point in time, and the bid and asked prices of each bank for currencies are subject to constant fluctation in response to changing conditions of supply and demand.

U.S. banks and their affiliates which participate in the interbank market for foreign exchange may also have any one or more of a variety of relationships to U.S. plans effecting foreign exchange transactions with those banks or their affiliates. These possible relationships may include the following:

(1) Trustee or investment manager with investment discretion over the plan assets which are invested in foreign securities.

(2) Trustee or trustee with respect to the plan assets invested in foreign securities (but without any investment responsibility for such assets).

(3) Custodian or subcustodian for the plan assets invested in foreign securities.

(4) Other fiduciary or service provider relationships with respect to the plan or to plan assets other than those which are invested in foreign securities.

(5) Sponsor (or a relationship to a sponsor) of a plan which invests in foreign securities.

The ABA believes that, to date, investments in foreign securities have been made primarily by larger employee benefit plans, which typically allocate only a small portion of their total assets (generally not more than 5%) to such investments and which often appoint a trustee or investment manager (as defined in ERISA section 3(38)) with full investment discretion with respect to such assets. The ABA also believes that, in the large majority of cases, the U.S. bank effecting a foreign exchange

[1] The Department also has under consideration an application [Application No. D 4940] submitted by Continental Illinois Bank (CIB) on October 28, 1983 for an individual exemption from the restrictions of section 406 of ERISA and from the taxes imposed by section 4975 (a) and (b) of the Code by reason of certain transactions which are described in section 4975(c)(1) (A) through (F) of the Code and which involves the acquisition and disposition by employee benefit plans of foreign currencies through CIB. Interested persons are referred to the DIB application on file with the Department for further details.

[2] The term "foreign exchange" is used in the ABA application to describe non-U.S. currencies in which foreign assets are denominated.

transaction for a U.S. plan serves as a directed trustee or custodian with respect to the foreign securities maintained abroad for the plan. Such foreign exchange transactions are generally incidental to, or result from, a transaction involving a foreign security effected by a plan fiduciary, such as an investment manager or named fiduciary, which is totally independent of the plan's trustee or custodian bank and its affiliates (herein referred to as an "independent plan fiduciary"). The tendency of plans to centralize their custodial and foreign exchange functions at a single bank is reflected by the fact that, according to the ABA, approximately 90% of the foreign exchange transactions conducted for plans by non-bank independent fiduciaries are effected with the bank at or through which the plan's assets are maintained abroad.

Plan-related foreign exchange transactions only infrequently attain the size of interbank transactions (*i.e.*, approximately $2,000,000 or more). The ABA understands that on average such transactions are substantially less than $150,000 and, in the case of dividend payments, interest and other income distributions, frequently involve less than $20,000. Moreover, the ABA estimates that substantially more than 70% of the foreign exchange transactions effected for employee benefit plans are "split" transactions.[3] To effect a split transaction other than from inventory, it is necessary for a bank to obtain a market counterparty having equivalent currency and maturity needs which is conducting the transaction in the opposite direction. Since this is generally difficult to do and even impossible in some cases, most split transactions must be effected out of a bank's own foreign exchange inventory.

An independent plan fiduciary has a number of choices as to how it will effect the foreign exchange conversions which may be required with respect to a given investment transaction. For example, the fiduciary may decide to contact directly the foreign exchange trading facility in the plan's trustee or custodian bank and arrange the necessary foreign exchange transactions. Or the independent plan fiduciary may decide to effect the transaction directly through the foreign exchange trading desk of a bank which has no party in interest relationship to the plan, within the meaning of ERISA section 3(14). Alternatively, the independent plan fiduciary might have an arrangement with the trustee or custodian bank (or another bank) under which the bank's administrative or trust personnel will obtain the necessary foreign currency from the bank's own trading desk. Instead of directing the foreign exchange transactions itself, the independent plan fiduciary may arrange for plan-related foreign exchange transactions to be effected by the trustee or custodian bank under various types of written standing instructions. Such instructions might, for example, authorize the bank to accumulate dividends, interest and other distributions on the plan's foreign securities until a certain minimum level is reached, before converting such amounts into U.S. dollars without any further instructions from the independent plan fiduciary.

As noted, most plan-related foreign exchange transactions are effected out of a bank's own inventory or foreign currencies. The rates at which these transactions are effected for institutional customers (including plans) are generally arrived at by the bank through adjustments to the bank's interbank rates to reflect various factors, such as the size of the transaction, prevailing market conditions, the position of the bank in a particular currency, and the present and anticipated volume of transactions from the customer. Very small transactions, for example, are typically effected at exchange rates which are substantially less favorable to the bank's customers than interbank rates.

The foreign exchange market is essentially an auction market in which the prices at which a given institution will purchase or sell currencies often vary from minute to minute or even more frequently. The interbank bid and asked prices of a particular bank are generally immediately available through Reuters and other subscription services using computerized data processing facilities. In addition, certain publications, such as the Wall Street Journal and the New York Times, publish the interbank foreign exchange rates for certain banks at selected times each day. While each bank engaging in foreign exchange transactions maintains some records of the transactions which it effects with its customers, no continuous hard copy is maintained of the aggregate transactions or prevailing prices of the institutions which are the primary dealers in foreign currencies. Moreover, it is unlikely that there will be precisely equivalent transactions to which a plan's foreign exchange transactions can be compared at any point in time. Nonetheless, the ABA believes that the best opportunity for effective oversight and evaluation by independent fiduciaries with respect to plan foreign exchange transactions is at the point at which the transaction is effected. Such oversight, the ABA asserts, is provided in cases where an independent plan fiduciary directly effects a foreign exchange transaction through a bank's foreign exchange trading desk. Where a bank is authorized by a plan to enter into a foreign exchange transaction for the plan on the basis of standing instructions, the ABA believes that reference to published interbank rates, together with timely monitoring of specific transactions before and after the trades in question, provide an adequate basis for supervision of the transactions by independent plan fiduciaries.

The ABA believes that U.S. plans which invest in foreign securities will incur higher costs in obtaining needed foreign currencies and will be subject to a greater potential for loss if they are not permitted to effect foreign exchange transactions with banks which are parties in interest with respect to those plans. For example, the ABA states that, in the case of foreign exchange transactions involving small and/or odd amounts or split maturity cycles, plans may have to pay a substantial premium if they have no alternative to effecting such tranactions in the open market with unrelated banks. The ABA also believes that it may not always be possible for a plan to effect transactions involving split maturity cycles with an unrelated bank.

The ABA represents that the requested exemption satisfies the requirements of section 408(a) of ERISA. In this connection, the ABA emphasizes that, in order to qualify for the requested exemption, a foreign exchange transaction would either have to be directly effected by an independent plan fiduciary through a party in interest bank, or authorized and monitored by an independent plan fiduciary, and the transaction would, in any event, have to satisfy both arm's-length tests specified in the exemption.

[3] Foreign exchange transactions generally are either "spot," "forward," or "split" depending on the settlement date of the transaction. A "spot" transaction is settled on the second business day after the transaction date. A "forward" transaction is an agreement to exchange the currencies at a certain rate on a specified future settlement date fitting a recognized maturity cycle (typically involving a period of 30, 60, 90 and 180 days). A "split" transaction is any transaction involving a settlement date which does not conform with the settlement date for spot and standard forward foreign exchange transactions. For example, a foreign exchange transaction having a settlement date twenty-three days in the future would be a "split" transaction.

B. Possible Violations of the Prohibited Transaction Restrictions for Which an Exemption is Requested

A foreign exchange transaction between a bank or its affiliate and an employee benefit plan could result in a prohibited transaction under one or more of the provisions of section 406(a) or 406(b) of ERISA, depending upon the relationship of the bank or affiliate to the plan.[4] For example, where the bank or affiliate is a party in interest with respect to the plan by reason of being a person described in ERISA section 3(14)(A) (*e.g.*, a fiduciary) or 3(14)(B) (a service provider), the transaction could result in a prohibited sale or exchange of an asset between a plan and a party in interest under ERISA section 406(a)(1)(A) or a transfer of plan assets to, or use of plan assets by or for the benefit of, such party in interest under ERISA section 406(a)(1)(D).

If the bank or affiliate executing a foreign exchange transaction with the plan is a fiduciary (as defined in ERISA section 3(21)(A)) with respect to the plan assets involved in the transaction, the transaction might result in a violation of one or more of the prohibitions of section 406(b) of ERISA. ERISA section 406(b) prohibits a fiduciary from (1) dealing with the assets of the plan in its own interest or for its own account, (2) acting in any transaction involving the plan on behalf of a party (or representing a party) whose interests are adverse to those of the plan or its participants or beneficiaries, and (3) receiving consideration for its own personal account from any party dealing with the plan in connection with a transaction involving the assets of the plan. Since foreign exchange transactions are generally effected from inventory, the ABA does not believe that any such transactions should result in a prohibited transaction under section 406(b)(3) of ERISA.

C. Description of the Requested Exemption

1. Scope. The ABA requests a retroactive and prospective class exemption from the restriction of ERISA section 406 (a) and (b) (and from the taxes imposed by section 4975 (a) and (b) of the Code) for all foreign exchange transaction effected by any bank, or any affiliate [5] thereof (domestic or foreign), if the conditions described below are met. As modified by the ABA's June 21, 1985 letter to the Department, the requested exemption is not intended to cover retroactive or prospective transactions where the bank or its affiliate has investment management discretion over the plan assets involved.

2. Retroactive Relief Requested. The requested exemption would apply to transactions occurring from January 1, 1975 to the date ninety days after the **Federal Register** publication date of the final exemption, provided that (1) the "general arms' length test", discussed below, is met and (2) an independent plan fiduciary has either effected the transaction on behalf of the plan by dealing with the bank's foreign exchange trading department or has authorized the bank to enter into foreign exchange transactions on behalf of the plan.

3. Prospective Relief Requested. Under the exemption requested by the applicant, for covered transactions occurring on or after the date which is ninety days after publication of the final exemption in the **Federal Register**, the conditions which must be met would depend on whether (1) the transaction is effected directly by a plan fiduciary independent of the bank, or (2) the transaction is entered into by the bank on behalf of the plan pursuant to standing instructions from an independent fiduciary.

Prospectively, all covered transactions under the requested exemption must meet both a "general" arms' length test and a "particular" arms' length test, which are described below. In addition, in order for any transaction to qualify for the exemption, the bank must maintain at all times written policies and procedures regarding the handling of foreign exchange transactions with plans with respect to which the bank is a trustee, custodian, fiduciary or other party in interest or disqualified person which assure that the person acting for the bank knows that he or she is dealing with a plan. Finally, all covered prospective transactions must meet general conditions relating to recordkeeping and disclosure which are described below.

Under the requested exemption, where a plan fiduciary which is independent of a bank does not directly effect the transaction through the bank's foreign exchange desk but instead authorizes the bank to enter into the transaction pursuant to standing instructions, the following conditions would also have to be satisfied:

(A) The bank must be authorized in writing to enter into the transaction (the authorization can be without limit of time).

(B) The bank must have provided the authorizing fiduciary with a written statement indicating that the foreign exchange transactions in question can be effected by parties other than the bank, that the exchange rates are not fixed and that the bank has discretion to set the rates within the limits of the applicable arm's length tests.

(C) If the written authorization is a continuing one, it must specify the events which could trigger a foreign exchange transaction covered by the authorization, and provide for terminability of the authorization without penalty with 10 days notice to the bank.

(D) The bank must furnish the authorizing fiduciary with information within 45 days after the end of each quarter, specifying:

(1) Each transaction covered by the exemption in the period; and

(2) The foreign exchange rate for each transaction.

4. Arm's Length Tests. The "general arm's" length test of the requested exemption requires that, at the time the transaction is entered into, the terms of the transaction be not less favorable to the plan than the terms generally available in arm's length transactions between unrelated parties. The "particular" arm's length test of the requested exemption requires that the exchange rates afforded to the plan be not less favorable to the plan than rates afforded by the bank or an affiliate thereof in comparable foreign exchange transactions involving unrelated parties.

5. Recordkeeping and Disclosure. Under the requested exemption, a bank would have to maintain for a period of six years from the date of each plan foreign exchange transaction the records necessary to allow authorized persons to determine whether the conditions of the exemption have been met. Authorized persons, *i.e.*, authorized employees of the Department and the Internal Revenue Service, certain plan fiduciaries and certain contributing

[4] Under Reorganization Plan No. 4 of the 1978 (43 FR 47713, October 17, 1978), the authority of the Secretary of the Treasury to issue rulings under section 4975 of the Code has been transferred, with certain exceptions not here relevant, to the Secretary of Labor. Therefore, the references in this notice to specific sections of ERISA refer also to the corresponding sections of the Code.

[5] The term "affiliate" is defined in the requested exemption application to include—

(i) Any person directly or indirectly through one or more intermediaries controlling, controlled by or under common control with the person;

(ii) Any officer, director, employee, relative of, agent of, or partner in any such person; and

(iii) Any corporation or partnership of which such person is an officer, director, partner or employee.

The term "control" is defined in the application to mean the power to exercise a controlling influence over the management or policies of a person other than an individual.

employers, would generally be permitted to review the bank's foreign exchange transaction records at their customary location during normal business hours, subject to restrictions on access by non-Governmental persons to a bank's trade secrets and privileged or confidential commercial and financial information. However, the applicant requests that, if the records are maintained outside the United States, a bank be given thirty days to make them available at its U.S. headquarters or such other place as the bank and the requesting party may agree upon.

Solicitation of Comments on the Application

The questions asked by the Department in its September 15, 1986 **Federal Register** solicitation of comments on the application were intended to determine whether the requested exemption would meet the requirements of ERISA section 408(a) that an exemption be administratively feasible, in the interests of plans and their participants and beneficiaries, and protective of the rights of plan participants and beneficiaries. The Department invited interested persons to provide supplementary information with regard to the costs or hardships for plans which might result from partial or complete denial of the exemption requested by the ABA, as well as information with regard to the size, frequency and operational characteristics of the foreign exchange activities of domestic employee benefit plans. The Department also requested information concerning procedures which might be used by independent plan fiduciaries to determine whether foreign exchange transactions effected by such fiduciaries with party in interest banks meet the arm's length" tests described in the ABA application, as well as whether any other standards and safeguards should be included in a foreign exchange class exemption in addition to or in lieu of such arm's length tests.

A total of seventeen substantive responses to the solicitation of comments were received: Two were from the ABA itself; ten were from employee pension benefit plans; three were from investment managers; one was from a non-bank dealer in foreign exchange; and one was from a securities broker-dealer trade association, which basically requested comparable relief.

For the most part, the responding plans supported the ABA application and asserted that denial of the requested exemption would increase the plans' foreign-exchange related costs, stating that plan foreign exchange transactions typically involve relatively small and odd-lot amounts, as well as non-standard foreign exchange maturities. These commenters generally contented that, if they are required to effect their foreign exchange transactions through non-party in interest foreign exchange dealers, transactional delays and increased administrative burdens, as well as higher costs, will result. Almost all of the responding plans indicated that they utilize the services of independent investment managers with expertise in international financial markets to direct and monitor their portfolio-related foreign exchange transactions. The consensus among the responding plans appears to be that custodial banks are more accommodative than non-party in interest foreign exchange dealers in handling the relatively small foreign exchange transactions which plans typically generate, although several suggested that large transactions could be or should be done competitively. Consistent with the argument put forward by the ABA, most of the responding plans took the position that granting of the requested exemption would benefit them by preserving a wider range of choices in buying and selling foreign exchange. None of the responding plans suggested any standards or safeguards for a foreign exchange class exemption which could be used in addition to or in lieu of the "arm's-length" tests proposed by the ABA.

Of the three investment management firms which submitted comments, two supported the ABA application in all respects and one firm recommended that the Department limit exemptive relief to situations where plan portfolio managers directly place foreign exchange orders with banks' foreign exchange desks and directly oversee the trades.

Only one non-bank foreign exchange dealer submitted comments. It expressed the view that foreign exchange rates are far more volatile than the ABA indicated in its application, and disputed the ABA's contention that reference to published interbank rates and "timely monitoring" of foreign exchange transactions provide an adequate basis for supervision of those transactions by plan fiduciaries. Nevertheless, the commenter conceded that exemptive relief (subject to an objective pricing standard) would be cost-efficient for smaller plan transactions. It opposed any exemptive relief for large plan transactions (*e.g.*, $2,000,000 or more).

Discussion of the Proposed Exemption

On the basis of the representations made by the ABA, as well as the public comments received in response to the September 15, 1986 solicitation of comments on the application, the Department is hereby proposing retroactive and prospective relief from the restrictions of section 406(a)(1) (A) through (D) of ERISA and from the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code for plan foreign exchange transactions with respect to which an independent fiduciary effects the transactions on behalf of the plan by dealing directly with the foreign exchange trading department of a party in interest bank or an affiliate thereof. Under the terms of the proposal, the exemption would cover plan foreign exchange transactions where the fiduciary directs the bank or its affiliate to effect the purchase or sale of a specific amount of foreign currency at a specific exchange rate, provided that the conditions set forth in the exemption are satisfied. The proposed exemption would not apply to foreign exchange transactions involving plan assets with respect to which a party in interest bank or an affiliate thereof has any discretionary authority or control or renders investment advice, within the meaning of 29 CFR 2510.3–21(c). As proposed, the exemption does not extend to transactions which would ordinarily give rise to violations of section 406(b) ERISA. Thus, the proposed exemption does not contain any relief from the restrictions of section 406(b) of ERISA or from the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (E) and (F) of the Code.

The Department's proposed relief for "directed" transactions is based upon its understanding that each plan foreign exchange transaction covered by the exemption would be effected under the direct and essentially contemporaneous oversight of a plan fiduciary independent of the party in interest bank involved in the transaction. The Department believes that independent plan fiduciaries who wish to determine whether such transactions effected through party in interest banks meet the "general" arm's length test could do so with reasonable precision by combining the use of on-line, computerized foreign exchange data services and "comparison shopping" with competing foreign exchange dealers, in order to assess the impact of such factors as transaction size and contract maturity cycles.

The Department has not proposed relief for plan foreign exchange transactions effected by a party in interest bank or an affiliate thereof pursuant to a "standing authorization," i.e., where a bank has a continuing written authorization to effect foreign exchange transactions for a plan pursuant to written guidelines provided by an independent plan fiduciary. In this regard, the Department has concluded that neither the application and supplements thereto submitted by the ABA nor the public comments received in response to the Department's September 15, 1986, solicitation of comments provide a record which is sufficient to make the findings by the Department required under ERISA section 408(a) to grant exemptive relief with respect to "standing authorization" transactions. Specifically, the Department is unable to conclude that independent plan fiduciaries could consistently and accurately apply both the "general" and the "particular" arm's length tests on a retroactive basis, particularly with respect to transactions effected during periods of increased foreign exchange market volatility.

In attempting to apply the general arm's length tests to already completed transactions, an independent plan fiduciary would have to reconstruct market prices without having the benefit of the kind of continuous hard copy of market prices and transaction volume data which is maintained by national securities exchanges. In addition to having to extrapolate retroactively foreign exchange prices against published interbank prices available for selected times on a given day, an independent plan fiduciary would also have to evaluate the impact on specific completed foreign exchange transactions of other factors typically involved in such transactions, such as relatively low dollar volume and non-standard maturity cycles. Even if the independent plan fiduciary is afforded access to a bank's internal foreign exchange trading records, there is no assurance that the bank's trading records will contain the record of a comparable and contemporaneous foreign exchange transaction effected by the bank. Accordingly, on the basis of the record before it, the Department does not believe that the various conditions proposed by the ABA for "standing authorization" transactions would effectively and consistently address the potential for abuse of discretion by party in interest banks in setting exchange rates for such transactions, in the absence of a completely objective pricing standard that all plan foreign exchange transactions effected by such banks would be required to meet without the need for any subjective interpolation.

The proposed exemption includes certain conditions for plan foreign exchange transactions which are directed by an independent fiduciary. With respect to such transactions occurring during the period from January 1, 1975 to the date which is ninety days after publication of the final exemption in the **Federal Register**, each covered transaction must meet the "general" arm's length test set forth in the proposal, i.e., at the time the transaction is entered into, the terms thereof must not be less favorable to the plan than the terms generally available in arm's length transactions between unrelated parties.

On a prospective basis, the proposal provides that covered transactions must meet both the "general" arm's length test and a "particular" arm's length test, i.e., at the time the transaction is entered into, the terms thereof must be not less favorable to the plan than the terms afforded by the bank or any affiliate thereof in comparable foreign exchange transactions involving unrelated parties. Under the proposal, a written confirmation statement must be issued within five business days to the person directing each covered transaction for the plan.[6]

Consistent with the practice followed in other prohibited transaction class exemptions granted by the Department, the proposal contains a condition requiring a bank or its affiliate utilizing the exemption on a prospective basis to maintain for a period of six years from the date of each covered transaction, subject to limited exceptions, the records necessary to enable certain persons to determine whether the applicable conditions of the exemption have been met. Such persons include any duly authorized employee or representative of the Department or the Internal Revenue Service, any plan fiduciary who has authority to acquire or dispose of the assets of the plan involved in a foreign exchange transaction, and any contributing employer to the plan. In order to minimize the risk that foreign governments might deny or restrict access to bank (or affiliate) records involving covered foreign exchange transactions, the proposal requires that such records be maintained within territories under the jurisdiction of the United States Government.

[6] In light of the conditions contained in the proposed exemption, the Department has not followed a commenter's suggestion that relief be limited to smaller foreign exchange transactions. Furthermore, the Department believes that the adoption of a safe harbor rate would, even for small transactions, result in arbitrarily set rates.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the recordkeeping provisions that are included in this proposed class exemption are being submitted to the Office of Management and Budget for its review and approval.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which require, among other things, that a fiduciary discharge his duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b) of the Act and section 4975(c)(1) (E) and (F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of the participants and beneficiaries;

(4) If granted, the proposed class exemption will be applicable to a particular transaction only if the transaction satisfies the conditions specified in the class exemption; and

(5) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Code and Act, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of

whether the transaction is in fact a prohibited transaction.

Written Comments

All interested persons are invited to submit written comments to the address and within the time period set forth above. All comments will be made a part of the record. Comments should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the following class exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1.

Section I. Transactions

(a) For the period from January 1, 1975 to June 18, 1991, the restrictions of section 406(a)(1) (A) through (D) of the Employee Retirement Income Security Act of 1974 (the Act) and the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code of 1986 (the Code) by reason of Code section 4975(c)(1) (A) through (D) shall not apply to any foreign exchange transaction between a bank or an affiliate thereof and an employee benefit plan with respect to which the bank or an affiliate is a trustee, custodian, fiduciary or other party in interest, provided that (i) the transaction is directed (within the meaning of section IV(e)) on behalf of the plan by a fiduciary which is independent of the bank and its affiliates, and (ii) the conditions set forth in section II are met.

(b) Effective June 18, 1991, the restrictions of section 406(a)(1) (A) through (D) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of Code section 4975(c)(1) (A) through (D) shall not apply to any foreign exchange transaction between a bank or an affiliate thereof and an employee benefit plan with respect to which the bank or an affiliate is a trustee, custodian, fiduciary, or other party in interest, provided that (i) the transaction is directed (within the meaning of section IV(e)) on behalf of the plan by a fiduciary which is independent of the bank and its affiliates, and (ii) all of the conditions set forth in sections II and III are met.

Section II. General Conditions

Section I of this exemption applies only if the following conditions of this section II are satisfied. In the case of transactions described in section I(b), all of the conditions specified in section III below must also be satisfied.

(a) At the time the transaction is entered into, the terms of the transaction are not less favorable to the plan than the terms generally available in comparable arm's length foreign exchange transactions between unrelated parties.

(b) Neither the bank nor any affiliate thereof has any discretionary authority or control with respect to the investment of the plan assets involved in the transaction or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to the investments of those assets.

Section III. Specific Conditions

Section I(b) of this exemption applies only if the conditions specified in section II above and the following conditions are satisfied:

(a) At the time the transaction is entered into, the terms of the transaction are not less favorable to the plan than the terms afforded by the bank or any affiliate thereof in comparable arm's length foreign exchange transactions involving unrelated parties.

(b) The bank maintains at all times written policies and procedures regarding the handling of foreign exchange transactions with plans with respect to which the bank is a trustee, custodian, fiduciary or other party in interest or disqualified person which assure that the person acting for the bank knows that he or she is dealing with a plan.

(c) A written confirmation statement is issued with respect to each covered transaction to the independent plan fiduciary who directs the transaction for the plan.

The confirmation shall disclose the following information:

(1) account name;
(2) transaction date;
(3) exchange rates;
(4) settlement date;
(5) foreign currencies—
(i) indentity of the currency;
(ii) whether purchased or sold;
(iii) the amount purchased or sold; and
(6) U.S. dollars—
(i) whether purchased or sold;
(ii) the amount purchased or sold.

The confirmation shall be issued in no event more than 5 business days after execution of the transaction.

(d) The bank or its affiliate maintains within territories under the jurisdiction of the United States Government, for a period of six years from the date of the transaction, the records necessary to enable the persons described in paragraph (e) of this section to determine whether the applicable conditions of this exemption have been met, except that (i) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the bank's control, the records are lost or destroyed prior to the end of the six-year period, and (ii) a fiduciary of a plan who is independent of a bank or its affiliate, which engages in a transaction covered by the exemption, shall not be subject to the civil penalty that may be assessed under 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, solely because the records are not maintained by the bank or its affiliate, or are not made available for examination by the bank or its affiliate as required by paragraph (e) below.

(e)(i) Except as provided in subparapraph (ii) of this paragraph and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (d) of this Section are available at their customary location for examination, upon reasonable notice, during normal business hours by:

(A) Any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service.

(B) Any fiduciary of a plan who has authority to acquire or dispose of the assets of the plan involved in the foreign exchange transaction or any duly authorized employee and representative of such fiduciary.

(C) Any contributing employer to the plan involved in the foreign exchange transaction or any duly authorized employee or representative of such employer.

(ii) None of the persons described in subparagraphs (B) and (C) shall be authorized to examine a bank's trade secrets or commercial or financial information of a bank or an affiliate thereof which is privileged or confidential.

Section IV. Definitions and General Rules

For purposes of this exemption,

(a) A "foreign exchange transaction" means the exchange of the currency of one nation for the currency of another nation, or a contract for such an exchange.

(b) A "bank" means a bank which is supervised by the United States or a State thereof, or any affiliate thereof.

(c) An "affiliate" of a bank means any entity directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such bank.

(d) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(e) A foreign exchange transaction involving assets of an employee benefit plan shall be considered "directed" only where the independent plan fiduciary who has not been appointed by the bank or its affiliate directs such bank or its affiliate to effect the purchase or sale of a specific amount of currency at a specific exchange rate.

Signed at Washington, DC this 13th day of March, 1991.

Alan D. Lebowitz,

Deputy Assistant Secretary for Program Operations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 91-6532 Filed 3-19-91; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Identification of Possible Candidates for Service on Grant Application Review Panels

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: Public Law 101-512, reauthorization of the National Endowment for the Arts, requires that the Chairperson shall ensure that artistic excellence and artistic merit are the criteria by which applications are judged, taking into consideration general standards of decency and respect for the diverse beliefs and values of the American public.

The National Council on the Arts is the presidentially appointed body which advises the Chairperson of National Endowment for the Arts. The Council has determined that general standards of decency and respect for the diversity of beliefs and values represented by the American public can be ensured by including on the National Endowment for the Arts' grant application review panels qualified individuals from all parts of the country, representing the Nation's many cultural and ethnic groups, and holding divergent philosophical and aesthetic views.

The National Endowment for the Arts is expanding and centralizing the information on potential panelists it has collected to date, and seeks to identify additional sources of prospective panelists. The purpose of this notice is to widen that search by soliciting recommendations of individuals who have demonstrated expertise and ability in artistic genres or arts-related fields, and who desire to serve on a National Endowment for the Arts review panel. Persons wishing to recommend themselves or others in answer to this notice should submit written statements of interest containing the name, address, telephone number, area of expertise, and a resume. A response to this notice does not guarantee selection for panel service.

DATES: Names and pertinent data are being accepted throughout calendar 1991.

ADDRESSES: Written statements of interest and resumes should be sent to: Martha Jones, Acting Committee Management Officer, Council & Panel Operations, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 682-5433.

FOR FURTHER INFORMATION CONTACT: Martha Jones as indicated above.

SUPPLEMENTARY INFORMATION: The National Endowment for the Arts, an independent agency of the Federal Government, was created by Congress in 1965 to encourage and support American art and artists. It fulfills this mission by awarding grants to individual American artists and arts organizations, as well as through its leadership initiatives and advocacy activities.

The National Endowment for the Arts convenes more than 100 panels each year to review grant applications in the areas of dance, design arts, expansion arts, folk arts, inter-arts, literature, media arts, museums, music, opera-musical theater, theater, visual arts, international exchange, and assistance to State and local arts agencies and arts education programs. In addition to artists, arts administrators, scholars, and other such experts, lay persons with substantial experience in a particular artistic discipline also serve on the panels. The Endowment's authorizing statute defines lay pesons as "individuals who are knowledgeable about the arts but who are not engaged in the arts as a profession and are not members of either artists organizations or arts organizations."

The panels meet at the National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506. Panel members receive an honorarium of $100 a day, per diem, and travel expenses.

Martha Y. Jones,

Acting Director, Council & Panel Operations, National Endowment for the Arts.

[FR Doc. 91-6509 Filed 3-19-91; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection: 10 CFR part 62—Criteria and Procedures for Emergency Access to Non-Federal and Regional Low-Level Waste Disposal Facilities.

3. The form number if applicable: Not applicable.

4. How often the collection is required: The information is only required to be submitted when a low-level waste generator requests emergency access to an operating low-level radioactive waste disposal facility.

5. Who will be required or asked to report: Low-level radioactive waste generators, or States, seeking emergency access to an operating low-level radioactive waste disposal facility.

6. An estimate of the number of responses: One every three years.

7. An estimate of the total number of hours needed annually to complete the requirement or request: 680 hours per response. With one response every three years, the estimated annual burden is 227 hours.

8. An indication of whether section 3504(h), Public Law 96-511 applies: Not applicable.

9. Abstract: 10 CFR part 62 sets out the information to be provided to the NRC by any low-level radioactive waste generator, or State, seeking emergency access to an operating low-level radioactive waste disposal facility pursuant to section 6 of the Low-Level

Radioactive Waste Policy Amendments Act of 1985.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Comments and questions may be directed by mail to the OMB reviewer: Ronald Minsk, Paperwork Reduction Project (3150–0143), Office of Information and Regulatory Affairs, NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395–3084.

The NRC Clearance officer is Brenda Jo Shelton (301) 492–8132.

Dated at Bethesda, Maryland, this 11th day of March 1991.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Designated Senior Official for Information Resources Management.

[FR Doc. 91–6587 Filed 3–19–91; 8:45 am]

BILLING CODE 7590–01–M

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the Office of Management and Budget (OMB) review of information collection.

SUMMARY: The NRC has recently submitted to the OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. Type of submission, new, revision, or extension: Extension.

2. The title of the information collection: 10 CFR part 140, Financial Protection Requirements and Indemnity Agreements.

3. The form number if applicable: N/A.

4. How often the collection is required: As necessary in order for NRC to meet its responsibilities called for in section 170 of the Atomic Energy Act of 1954, as amended (the Act).

5. Who will be required or asked to report: Licensees authorized to operate reactor facilities in accordance with 10 CFR part 50.

6. An estimate of the number of responses: Approximately 201 annually (approximately 4.47 hours per respondent).

7. An estimate of the total number of hours needed to complete the requirement or request: 899.

8. An indication of whether section 3504(h), Public Law 96–511 applies: Not applicable.

9. Abstract: 10 CFR part 140 of the NRC's regulations specifies information to be submitted by licensees to enable the NRC to assess the financial protection required of licensees and for the indemnification and limitation of liability of certain licensees and other persons pursuant to section 170 of the Atomic Energy Act of 1954, as amended.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street NW., Lower Level, Washington, DC 20555.

Comments and questions can be directed by mail to the OMB reviewer: Ronald Minsk, Paperwork Reduction Project (3150–0039), Office of Information and Regulatory Affairs (NEOB–3019), Office of Management and Budget, Washington, DC 20503.

NRC Clearance Officer is Brenda J. Shelton (301) 492–8132.

Comments can also be submitted by telephone at (202) 395–3084.

Dated at Bethesda, Maryland, this 11th day of March, 1991.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Designated Senior Official for Information Resources Management.

[FR Doc. 91–6588 Filed 3–19–91; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on the Medical Uses of Isotopes (ACMUI); Subcommittee Meeting on Quality Assurance (QA) Rulemaking; Meeting Notice

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission (NRC) will convene a subcommittee meetng of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) to review the staff's proposed final language on the Quality Assurance (QA) rulemaking. The purpose of this meeting is to fulfill the staff's commitment to provide the ACMUI with the opportunity to continue its discussion of the QA rulemaking begun during its January 14 and 15, 1991, meeting in Alexandria Virginia. Scheduling issues and availability of the committee members have resulted in short notice being given for this meeting.

DATES: The meeting will be held on March 26, 1991.

ADDRESSES: Marriot Airport, I70 at Lambert International Airport, St. Louis, MO.

FOR FURTHER INFORMATION CONTACT: Larry W. Camper, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 492–3417.

Dated at Washington, DC this 14th day of March 1991.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Advisory Committee, Management Officer, Office of the Secretary of the Commission.

[FR Doc. 91–6590 Filed 3–19–91; 8:45 am]

BILING CODE 7590–01–M

Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee on Nuclear Waste (ACNW); Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the ACRS full Committee, of the ACNW, and the ACNW Working Groups the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published February 21, 1991 (56 FR 7068). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS full Committee and ACNW meetings designated by an asterisk (*) will be closed in whole or in part to the public. ACRS full Committee and ACNW meetings begin at 8:30 a.m. and ACRS Subcommittee and ACNW Working Group meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during ACRS full Committee and ACNW meetings and when ACRS Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the April 1991 ACRS and ACNW full Commitee meetings can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committees (telephone: 301/492–4600 (recording) or 301/492–7288, Attn: Barbara Jo White) between 7:30 a.m. and 4:15 p.m., Eastern Time.

ACRS Subcommittee Meetings

Joint Thermal Hydraulic Phenomena and Severe Accidents, March 21, 1991, Bethesda, MD. The Subcommittee will

discuss the issue of NRC computer codes and their documentation.

Auxiliary and Secondary Systems, March 22, 1991, Bethesda, MD. The Subcommittee will meet with NRC Research staff to discuss Generic Issue 57, "Effects of Fire Protection System Actuation on Safety Related Equipment," and Draft NUREG/CR–1421, Regulatory Analysis for Generic Issue 130, "Essential Service Water System Failures at Multi-Unit Sites."

Plant License Renewal, April 8, 1991 (1 p.m.–5 p.m.), Bethesda, MD. The Subcommittee will review the proposed final rule on Nuclear Power Plant License Renewal (10 CFR part 54).

Improved Light Water Reactors, April 9 (8:30 a.m.–5 p.m.) and 10 (8:30 a.m.–10:30 a.m.), 1991, Bethesda, MD. The Subcommittee will review the NRC staff's Draft Safety Evaluation Report corresponding to Chapters 6–13 of the EPRI–ALWR Requirements Document for the Evolutionary Designs, and other related issues.

Maintenance Practices and Procedures, April 10, 1991 (11 a.m.), Bethesda, MD. The Subcommittee will discuss the maintenance rule package.

Joint Regulatory Activities and Containment Systems, May 8, 1991, Bethesda, MD. The Subcommittees will review the proposed final revision to appendix J to 10 CFR part 50, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors", and an associated Regulatory Guide. In addition, the Subcommittees will discuss the proposed final resolution of Generic Issue 113, "Dynamic Qualification Testing of Large Bore Hydraulic Snubbers."

Joint Plant Operations and Probabilistic Risk Assessment, June 5, 1991, Bethesda, MD. The Subcommittee will review the NRC staff's Action Plan to evaluate the risk from nuclear power plant shutdown operations.

Thermal Hydraulic Phenomena, Date to be determined (April/May, tentative), Bethesda, MD. The Subcommittee will review the status of the application of the Code Scaling, Applicability, and Uncertainty (CSAU) Evaluation Methodology to a small-break LOCA calculation for a B&W plant.

Advanced Boiling Water Reactors, Date to be determined (April/May, tentative), Bethesa, MD. The Subcommittee will review the GE/ABWR design detail and layout.

Regional Programs, Date to be determined (third week of June 1991), NRC Region III Office, Glen Ellyn, IL. The Subcommittee will discuss the activities of the NRC Region III Office.

Extreme External Phenomena, Date to be determined (May/June, tentative), Bethesa, MD. The Subcommittee will discuss the NUMARC/EPRI Fire Methodology for IPEEE.

Joint Thermal Hydraulic Phenomena and Core Performance, Date to be determined (July/August, tentative), Bethesda, MD. The Subcommittees will continue their review of the issues pertaining to BWR core power stability.

Thermal Hydraulic Phenomena, Date to be determined (August, tentative), Bethesda, MD. The Subcommittee will continue its review of the NRC staff program to address the issue of interfacing systems LOCAs.

Severe Accidents, Date to be determined, Bethesda, MD. The Subcommittee will discuss elements of the Severe Accident Research Program.

Instrumentation and Control Systems, Date to be determined, Bethesda, MD. The Subcommittee will discuss EPRI's reactor set-point analysis methodology for future plants.

Improved Light Water Reactors, Date to be determined, Bethesa, MD. The Subcommittee will discuss adoption of the (N+2) concept for future plants.

ACRS Full Committee Meetings

372nd ACRS Meeting, April 11–13, 1991, Bethesda, MD. Items are tentatiavely scheduled.

*A. *Reactor Operating Experience (Open/Closed)*—Briefing and discussion of recent events and incidents that have occurred at nuclear power plants, including the steam generator tube failure at the Mihama Power Station in Japan. Representatives of the NRC staff will participate, as appropriate.

B. *Maintenance of Nuclear Power Plants (Open)*—Review and report on the proposed NRC rule regarding maintenance programs at nuclear power plants. Representatives of the NRC staff and the nuclear industry will participate, as appropraite.

C. *Alvin W. Vogtle Electric Generating Plant (Open)*—Briefing and discussion regarding the NRC staff action plan to deal with the lessons learned from the IIT investigation of the loss of vital AC power and decay heat removal event at Vogtle Unit 1 on March 20, 1990. Representatives of the NRC staff and the licensee will participate, as appropriate.

D. *Containment Design Criteria for Future Nuclear Power Plants (Open)*—Continue discussion of the proposed ACRS report to the NRC regarding contaiment design criteria for future light-water reactor plants to deal with severe accidents.

E. *Performance Indicator Program (Open)*—Briefing regarding the status of the: (1) NRC's development of a risk-based performance indicator program; and (2) NRC's use of performance indicators in general. Representatives of the NRC staff and the nuclear industry will participate, as approprite.

F. *Nuclear Power Plant License Renewal (Open)*—Review and report on the NRC's proposed final rule regarding renewal of operating licenses for nuclear power plants. Representataive of the NRC staff and the nuclear industry will participate, as appropriate.

G. *Generic Issue 130, Essential Service Water System Failures at Multi-Unit Sites (Open)*—Review and report on proposed NRC staff resolution of this generic issue. Representatives of the NRC staff will participate, as appropriate.

H. *Analysis and Evaluation of Operational Data (Open)*—Briefing and discussion of AEOD review and evaluation of the human factors aspects of events and abnormal occurrences at several nuclear plants. Representatives of the NRC staff and the licensees involved will participate, as appropriate.

I. *Meeting with NRC Commissioners (Open)*—Meeting with NRC Commissioners to discuss safety-related regulatory matters of mutual interest.

*J. *Appointment of New Members (Closed)*—Discuss qualifications of candidates proposed for appointment to the ACRS.

K. *Future Activities (Open)*—Discuss anticipated subcommittee activities and items proposed for consideration by the full Committee. Discuss administrative matters related to the conduct of committee business, as appropriate.

L. *ACRS Subcommittee Activities (Open)*—Reports on and discussion of the status of assigned subcommittee activities.

M. *ACRS Bylaws (Open)*—Discuss proposed revisions to ACRS Bylaws.

N. *Miscellaneous (Open)*—Continue discussion of issues that were not completed at previous ACRS meetings as time and availability of information permit.

373rd ACRS meeting, May 9–1, 1991—Agenda to be announced.

374th ACRS meeting, June 6–8, 1991—Agenda to be announced.

ACNW Full Committee and Working Group Meetings

29th ACNW meeting, March 20–21, 1991, Bethesda, MD. Items are tentatively scheduled.

A. Review and comment on an NRC staff Technical Position regarding Regulatory Considerations in the Design and Construction of the Exploratory Shaft Facility.

B. Meeting with the low-level waste coordinator from Massachusetts to

discuss the development of the state's strategic plan for LLW disposal.

C. Meeting with the Commissioners to discuss items of mutual interest.

D. Response to a recent Staff Requirements Memorandum related to revising 10 CFR part 61 relative to attention to leaching resistance of the low-level waste form.

E. Briefing on NRC oversight and monitoring of existing low-level waste disposal facilities through the Agreement State program.

F. Discuss ongoing projects concerning human intrusion and geoscience models for a high-level waste repository.

G. Discuss anticipated and proposed Committee activities, future meeting agenda, administrative, and organizational matters, as appropriate. Also, discuss matters and specific issues that were not completed during previous meetings as time and availability of information permit.

30th ACNW meeting, April 23–24, 1991, Bethesda, MD. Items are tentatively scheduled.

A. Review and comment on an NRC staff Technical Position on the High-Level Waste Repository Design for Thermal Loads.

B. Briefing on the HLWM staff Approach to Dealing with Uncertainties in Implementing the EPA's High-Level Waste Radiation Protection Standard, 40 CFR part 191.

C. Review and comment on a proposed NRC rule on a low-level Waste Uniform Shipping Manifest.

D. Briefing on decommissioning activities at specific sites such as United Nuclear Wood River Junction and AMAX West Virginia.

E. Presentation by an ACNW intern on a digital data set prepared for the Yucca Mountain site.

F. Prepare ACNW's next four month plan to the Commissioin for the period May–August, 1991.

G. Briefing by Louisiana Energy Systems on their private uranium enrichment facility plans. Topics of interest include the disposal of the depleted uranium and the licensing process for the facility.

H. Discuss anticipated and proposed Committee activities, future meeting agenda, administrative, and organizational matters, as appropriate. Also, discuss matters and specific issues that were not completed during previous meetings as time and availability of information permit.

31st ACNW Meeting, May 22–23, 1991—Agenda to be announced.

32nd ACNW meeting, June 19–21, 1991—Agenda to be announced.

ACNW Working Group on Geologic Dating, Date to be determined, Bethesda, MD. The Working Group will discuss problems and limitations with various quaternary dating methods to be used in site characterization of a high-level waste repository.

ACNW Working Group on Long-Term Climate Change, Date to be determined, Bethesda, MD. The Working Group will discuss potential long-range climate changes and their mpact on performance assessments of a proposed high-level repository.

ACNW Working Group on Integration of Geophysics Into Site Characterization of a High-Level Waste Repository. Date to be determined, Bethesda, MD. The Working Group will focus on what features geophysical testing should be directed for what what specific geophysical methods may be most applicable.

ACNW Working Group on Expert Opinion, Date to be determined, Bethesda, MD. The Working Group will continue the examination of methodologies of expert judgment, specifically on the methodology of an expert elicitation. The focus on the expert judgment reliance is the human intrusion scenario for the HLW repository.

Dated: March 14, 1991.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 91–6591 Filed 3–19–91; 8:45 am]

BILLING CODE 7590–01–M

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from February 25, 1991 through March 8, 1991. The last biweekly notice was published on March 6, 1991 (56 FR 9373).

Notice of Consideration of Issuance of Amendment To Facility Operating LIcense and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, D.C. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 19, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C. 20555 and at the Local Public Document Room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A

petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to **(Project Director)**: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document room for the particular facility involved.

Arizona Public Service Company et al., Docket No. STN 50-530 Palo Verde Nuclear Generating Station, Unit 3, Maricopa County, Arizona

Date of amendment request: February 21, 1991

Description of amendment request: The proposed changes are necessary to support operation of Palo Verde Unit 3 for fuel cycle 3. Specifically:

1. The proposed Technical Specification change would revise Figure 3.1-1A (shutdown margin versus cold leg temperature) and Tables 3.1-2, 3.1-3 and 3.1-5 (required monitoring frequencies for backup boron dilution detection as a function of operating charging pumps and plant operational modes). Figure 3.1-1A of Technical Specification 3.1.1.1 and 3.1.1.2, will be changed to increase the lower breakpoint temperature dependent shutdown margin from 3.5% delta k/k to 4.0% delta k/k for the temperature range 0 to 350 degrees F. Figure 3.1-1A provides shutdown requirements versus reactor coolant system cold leg temperature for the core when any full length control element assembly (CEA) is withdrawn.

Tables 3.1-2, 3.1-3 and 3.1-5 provide required boron monitoring frequencies in the event that one or both startup channel neutron flux alarms are inoperable. The proposed changes to these tables increase the required monitoring frequencies for backup boron dilution detection.

2. The proposed Technical Specification amendment revises Figures 3.2-2 and 3.2-2A. These figures provide DNBR margin limits for various configurations of the Core Operating Limit Supervisory System (COLSS) and Control Element Assembly Calculators (CEACs) inoperable. The changes provide assurance that operation of the reactor, within the limits as specified on revised Figures 3.2-2 and 3.2-2A, will not violate the specified acceptable fuel design limits during an anticipated operational occurrence.

3. The proposed amendment will revise Technical Specification Figures 3.1-3, and 3.1-4. These figures provide regulating group control element assembly (CEA) insertion limits. Figure 3.1-3 provides CEA insertion limits when the Core Operating Limit Supervisory System (COLSS) is in service and Figure 3.1-4 provides the insertion limits when COLSS is out of service. The following revisions are proposed:

- The revised Figure 3.1-3 (COLSS in service) will not permit the insertion of regulating group 3 CEAs above 20% of rated thermal power. This is more restrictive than the current specification which does allow for regulating group 3 insertion above 20% power.
- The revised Figure 3.1-4 (COLSS out of service) will permit slightly increased insertion of regulating group 3 CEAs between 15% and 20% of rated thermal power.

4. The proposed amendment revises Technical Specification 3.2.7a. The change involves a revision to the Core Operating Limit Supervisory System (COLSS) operable values of the core average axial shape index (ASI). The proposed revision changes the limits of the core average ASI, with COLSS operable, from between -.28 to + .28 to between -.27 to +.27.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

Shutdown Margin

Standard 1 — Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed Technical Specification changes are required to make the Unit 3 Technical Specifications consistent with the Cycle 3 safety analysis. Figure 3.1-1A provides shutdown requirements versus reactor coolant system cold leg temperatures for the core when any full length control element assembly is withdrawn. For operation below a reactor coolant system cold leg temperature of 350 degrees F, the shutdown margin must be increased from 3.5 to 4.0% delta k/k. This ensures that the consequences of a design basis accident and anticipated operational occurrence remain bounded by the safety analysis results. The function of the temperature dependent shutdown margin is to ensure that the reactor remains subcritical following a design basis event or anticipated operational occurrence.

Tables 3.1-2, 3.1-3 and 3.1-5 provide boron monitoring frequencies when one or both

startup channel high neutron flux alarms are inoperable. In some cases, the required monitoring frequencies must be increased. Increasing the required monitoring frequencies ensures that the time criteria for detection and correction of a boron dilution event remain the same as the safety analysis.

A review of all postulated accidents and anticipated operational occurrences has shown that the Cycle 3 core design meets these safety criteria. The Cycle 3 reload core characteristics have been evaluated with respect to the referenced cycle. The second cycle of operation will hereafter be referred to as the referenced cycle. (The analysis for the referenced cycle was transmitted to the NRC by letter dated December 27, 1988 (161-01575-DBK/PGN).

The increased shutdown margin will ensure that the Technical Specifications are consistent with the safety analysis performed for Cycle 3 and that the consequences of design basis event and anticipated operational occurrences are bounded by these analyses. The change in the monitoring frequencies of reactor coolant system boron concentrations are increased where appropriate to ensure that the Technical Specifications are consistent with the safety analysis. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Standard 2 — Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to Figure 3.1-1A and Tables 3.1-2, 3.1-3 and 3.1-5 are required to ensure the Technical Specifications remain consistent with the reference cycle safety analysis. The changes will not create the possibility of a new or different kind of accident from any accident previously evaluated. The changes ensure that the results of design basis event and anticipated operational occurrence are bounded by the safety analysis.

Standard 3 — Involve a significant reduction in a margin of safety.

The bases section for the Limiting Condition for Operation 3.1.1.2 states that the shutdown limits of Figure 3.1-1A are necessary to ensure that the reactor remains subcritical following a design basis accident or anticipated operational occurrence. With the proposed change to Figure 3.1-1A, the Unit 3, Cycle 3 safety analysis ensure that the results of design basis event and anticipated operational occurrences are bounded by the reference cycle analysis. The bases section for Limiting Condition for Operation 3.1.2.7 states that the boron monitoring frequencies ensure that boron dilution events will be detected with sufficient time for the operator to terminate the event before a complete loss of shutdown margin occurs. The revised monitoring frequencies of Table 3.1-2, 3.1-3 and 3.1-5 ensure that the time criteria for these actions will be consistent with the reference cycle. Therefore, the margin of safety, as defined in the bases sections of the Technical Specifications, will be maintained.

The proposed amendment matches the guidance concerning the application of standards for determining whether or not a significant hazards consideration exists (51FR7751) by example:

(iii) For a nuclear power reactor, a change resulting from a nuclear reactor core reloading, if no fuel assemblies are significantly different from those found previously acceptable to the NRC for a previous core at the facility in question are involved. This assumes that no significant changes are made to the acceptance criteria for the Technical Specifications, the analytical methods used to demonstrate conformance with the Technical Specifications and regulations are not significantly changed, and that the NRC has previously found such methods acceptable.

DNBR Margin

Standard 1 — Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to Technical Specification Figures 3.2-2 and 3.2-2A will not increase the probability or consequences of an accident previously evaluated because the revisions are required to maintain consistency with the Unit 3, Cycle 3 safety analysis. The reactor protection system functions to initiate a reactor trip at the required limiting safety system settings. The COLSS algorithms are executed in the Plant Monitoring System and are not required for plant safety since COLSS does not initiate any direct safety-related function during anticipated operational occurrences or postulated accidents. The Technical Specifications define the Limiting Conditions for Operation required to ensure that the reactor core conditions during operation are no more severe than the initial conditions assumed in the safety analysis and in the design of the low DNBR and high LPD trips. The COLSS serves to monitor core conditions in an efficient manner and provides indication and alarm functions to aid the operator in maintenance of core conditions within the LCOs given in the Technical Specifications. As stated in Section 7.7.1.3.1.1 of the UFSAR, "Technical Specifications for the reactor core provide an alternate means of monitoring the limiting conditions for operation in the event that the plant monitoring system is out of service." The proposed changes to the Technical Specification ensure that the LCOs assumed for the Unit 3, Cycle 3 safety analysis are appropriately maintained when COLSS is out of service.

Therefore, the proposed changes to the Technical Specifications will not increase the probability or consequences of an accident previously evaluated.

Standard 2— Create the possibility of a new or different kind of accident from any accident previously evaluated.

The revisions to Figures 3.2-2 and 3.2-2A are required to make the Technical Specifications consistent with the initial condition assumptions of the Unit 3, Cycle 3 safety analysis. There have been no hardware changes to equipment important to safety as a result of the proposed changes. Therefore, the proposed changes to the Technical Specifications will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Standard 3 — Involve a significant reduction in a margin of safety. Revisions to Figures 3.2-2 and 3.2-2A are necessary in order to make the Technical Specifications consistent with the Unit 3, Cycle 3 safety analysis. Operation of the reactor within the limits of the revised figures will ensure that the specified acceptable fuel design limits are not exceeded. The limits have been analytically demonstrated to maintain an acceptable minimum DNBR throughout all anticipated operational occurrences. The Unit 3, Cycle 3 figures are based on the same design criteria as the Unit 3, Cycle 2 figures. Therefore, the margin of safety will not be reduced as a result of the proposed change.

The proposed amendment matches the guidance concerning the application of standards for determining whether or not a significant hazards consideration exists (51 FR 7751) by example:

(iii) For a nuclear power reactor, a change resulting from a nuclear reactor core reloading, if no fuel assemblies are significantly different from those found previously acceptable to the NRC for a previous core at the facility in question are involved. This assumes that no significant changes are made to the acceptance criteria for the Technical Specifications, the analytical methods used to demonstrate conformance with the Technical Specifications and regulations are not significantly changed, and that NRC has previously found such methods acceptable.

CEA Insertion Limits

Standard 1 — Involve a significant increase in the probability or consequences of an accident previously evaluated.

Technical Specification Figures 3.1-3 and 3.1-4 are being revised to be consistent with the Unit 3, Cycle 3 safety analysis. The probability or the consequences of an accident previously evaluated will not increase because the results of the Cycle 3 safety analysis, using the revised CEA Insertion Limits of Figures 3.1-3 and 3.1-4, ensure that there is sufficient margin for the most limiting Design Basis Event. The analysis performed includes an evaluation of all safety analyses for which the CEA insertion limit curves are used as an initial condition.

These figures are called Power Dependent Insertion Limits (PDILs). The PDILs or the system which monitors the PDILs are not required for safety. The PDILs are part of the plant monitoring system as described in Section 7.7.1.3.2.1 and 7.7.1.3.2.2 of CESSAR. As stated in Section 7.7.2, "The plant control system and equipment are designed to provide high reliability during steady state operation and anticipated transient conditions. The RPS analysis of section 7.2.2 encompasses the failure modes of these control systems and demonstrates that these systems are not required for safety. The safety analysis of Chapter 15 do not require these systems to remain functional."

Therefore, the proposed Technical Specification changes will not increase the probability or consequences of an accident previously evaluated.

Standard 2 — Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed revisions are required to make the Technical Specifications consistent with the Unit 3, Cycle 3 safety analysis. As proposed, Figures 3.1-3 and 3.1-4 will ensure that the specified acceptable fuel design limits will not be exceeded during the most limiting anticipated operational occurrence. There have been no hardware changes to equipment important to safety as a result of the proposed changes. Since the Cycle 3 figures were based on meeting the same criteria as the Cycle 2 figures, the possibility of an accident of a different type than previously evaluated is not created.

Standard 3 — Involve a significant reduction in a margin of safety.

The proposed changes to Figures 3.1-3 and 3.1-4 are required to make the Technical Specifications consistent with the initial condition assumptions of the Cycle 3 safety analysis. The analysis performed includes an evaluation of safety analysis events for which the CEA insertion limit curve serves as an initial condition. The Cycle 3 limits are based on the same design criteria as that used for Cycle 2. Therefore, the margin of safety is not reduced as a result of the proposed changes.

The proposed amendment matches the guidance concerning the application of standards for determining whether or not a significant hazards consideration exists (51 FR 7751) by example:

(iii) For a nuclear power reactor, a change resulting from a nuclear reactor core reloading, if no fuel assemblies are significantly different from those found previously acceptable to the NRC for a previous core at the facility in question are involved. This assumes that no significant changes are made to the acceptable criteria for the Technical Specifications, the analytical methods used to demonstrate conformance with the Technical Specifications and regulations are not significantly changed, and that the NRC has previously found such methods acceptable.

Axial Shape Index

Standard 1 — Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed Technical Specification change to section 3.2.7a is required to be consistent with the Unit 3, Cycle 3 safety analysis. The reactor protection system functions to initiate a reactor trip at the required limiting safety system settings. The COLSS algorithms are executed in the plant monitoring system and are not required for plant safety since COLSS does not indicate any direct safety-related function during anticipated operational occurrences or postulated accidents. The Technical Specifications define the Limiting Conditions for Operation required to ensure that the reactor core conditions during operation are no more severe than the initial conditions assumed in the safety analysis and in the design of the low DNBR and high LPD trips. The COLSS serves to monitor core conditions (including axial shape index) in an efficient manner and provides indication and alarm functions to aid the operator in maintenance of core conditions within the Limiting Condition of Operation given in the Technical Specifications. The proposed change to the Technical Specifications ensure that the Limiting Conditions for Operation assumed for the Cycle 3 analysis are appropriately maintained. The change to the axial shape index limits, with COLSS operable, is more restrictive than that required for Cycle 2 operation in that the uncertainty associated with COLSS calculated ASI has increased. Therefore, the proposed Technical Specification change will not increase the probability or the consequences of an accident previously evaluated.

Standard 2 — Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to Technical Specification 3.2.7a is required to ensure consistency between Cycle 3 safety analysis and the Technical Specification is maintained. Reactor operation within the axial shape index, as proposed, is more restrictive than what was required for Cycle 2 operation. There are no hardware changes to equipment important to safety as a result of the proposed change. Therefore, the possibility of a new accident or different kind of accident from any accident previously evaluated will not be created.

Standard 3 — Involve a significant reduction in a margin of safety.

The proposed change to Technical Specification 3.2.7a ensures that the actual value of the axial shape index is maintained within the range of values used in the Unit 3, Cycle 3 safety analysis. Therefore, no reduction in a margin of safety, as defined by the Technical Specification bases, will occur as a result of this request for an amendment.

The proposed amendment matches the guidance concerning the application of standards for determining whether or not a significant hazards consideration exists (51 FR 7751) by example:

(iii) For a nuclear power reactor, a change resulting from a nuclear reactor core reloading, if no fuel assemblies are significantly different from those found previously acceptable to the NRC for a previous core at the facility in question are involved. This assumes that no significant changes are made to the acceptable criteria for the Technical Specifications, the analytical methods used to demonstrate conformance with the Technical Specifications and regulations are not significantly changed, and that the NRC has previously found such methods acceptable.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004.

Attorney for licensees: Arthur C. Gehr, Esq., Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85073

NRC Project Director: James E. Dyer

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: January 22, 1991

Description of amendment request: The proposed amendment would revise the Technical Specifications to eliminate the setdown requirements for the Average Power Range Monitor (APRM) flow referenced rod block and scam lines and changes the Rod Block Monitor (RBM) rod block setpoints from flow-biased to power-dependent. The revisions will enhance plant availability by facilitating more rapid power ascensions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. APRM CHANGES

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed change does not create new transients, increase the frequency of the transients analyzed, or change governing design criteria. The elimination of APRM setdown requirements provide the same extent of protection as the existing setpoints, because these setpoints have no influence or impact on the design basis accidents.

Information presented in NEDC-31312-P shows that the consequences of accidents and transient events which might be affected by implementation of the ARTS program are bounded by the consequences of the same events initiated from current licensing basis conditions, provided the appropriate adjustments to the operating limits are utilized. The proposed Technical Specification changes will assure that needed adjustments are made.

2. The possibility of an accident or malfunction of a different type than analyzed in the FSAR does not result from this change. No changes are proposed which introduce new initiating events. No changes are proposed that affect the reliability or performance of equipment serving a safety function. Therefore, no new failure modes are introduced by the proposed changes in the setpoints for this instrumentation.

3. The proposed change does not involve a significant reduction in the margin of safety since the PNPS safety analyses are based upon an APRM scram signal at 120% of power. This setpoint is unchanged by this submittal. The elimination of the APRM setdown requirement is compensated by new flow and power dependent thermal operating limits which ensure safety margins equal to or larger than those in present Technical Specifications.

B. RBM CHANGES

1. The proposed change does not involve a significant increase in the probability or

consequences of an accident previously evaluated because it does not create new transients, increase the frequency of existing transients, or change the governing design criteria.

Information presented in NEDC-31312-P shows that the consequences of accidents and transient events which might be affected by implementation of the ARTS program are bounded by the consequences of the same events initiated from current licensing basis conditions. provided the appropriate adjustments to the operating limits and RBM setpoints are utilized. The proposed Technical Specification changes will assure that needed adjustments are made.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated because the upgraded setpoints in no way influence, impact or contribute to the probability or consequences of any accident. The Technical Specification will continue to require operation within the required margin of safety to ensure fuel cladding integrity, which precludes release of radioactive materials, thereby assuring compliance with 10 CFR 100 limits.

3. The proposed change does not involve a significant reduction in the margin of safety since the new power dependent RBM setpoints continue to provide protection of the minimum critical power ration (MCPR) safety limit in the event of a rod withdrawal error.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360

Attorney for licensee: W. S. Stowe, Esquire, Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199

NRC Project Director: Susan F. Shankman, Acting

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: January 4, 1991

Description of amendments request: The proposed amendments would make the following changes to the Brunswick Steam Electric Plant (BSEP), Units 1 and 2 Technical Specifications (TS) and Operating Licenses.

Proposed Change No. 1:

Replace the existing license conditions 2.B(6) for BSEP Units 1 and 2 with the standard license condition in Generic Letter 86-10.

Proposed Change No. 2:

Delete BSEP Units 1 and 2 Fire Protection TS 3/4.3.5.7, 3/4.7.7.1, 3/4.7.7.2, 3/4.7.7.3, 3/4.7.7.4, 3/4.7.7.5, 3/4.7.8 and the associated bases.

Proposed Change No. 3:

Delete BSEP Units 1 and 2 minimum Fire Brigade staffing requirements in TS 6.2.2g.

Proposed Change No. 4:

Delete BSEP Units 1 and 2 Special Report requirements in TS 6.9.2 d, g, and h.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Proposed Change No. 1

Replace the existing license condition 2.B(6) with the standard license condition in Generic Letter 86-10.

Basis

The change does not involve a significant hazards consideration for the following reasons:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The existing license condition requires that the licensee comply with the provisions of the November 22, 1977 Fire Protection Safety Evaluation Report and supplements thereto. The new license condition will require all provisions of the fire protection program to be maintained in effect, and that changes to the program may be made in accordance with the provisions of 10 CFR 50.59. The overall objective of the Fire Protection Program and License Conditions is to ensure safe shutdown of the plant in the event of a fire. The provisions of 10 CFR 50.59 preserve the ability to achieve and maintain safe shutdown of the plant. Therefore, the new license condition is consistent with the objective of the existing license condition and Generic Letter 86-10. Consequently, this change will not increase the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The new license condition will ensure that the ability to achieve and maintain safe shutdown in the event of a fire is preserved. Since this new license condition is consistent with the objective of the old license condition, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety. The requirements contained in the existing license condition 2.B(6) are also contained in a "Commitment Document" incorporated by reference into the FSAR [Final Safety Analysis Report]. Removal of the existing license condition provides consistency with Generic Letter 86-10. The fire protection program, which documents compliance to 10 CFR 50, Appendix R in accordance with the requirements of 10 CFR 50.48 has been incorporated into the updated FSAR by letter dated June 1, 1987. As discussed in Item 1 above, the new license condition is consistent with the intent of the existing license condition.

Accordingly, this proposed change will not involve a reduction in the margin of safety.

Proposed Change No. 2:

Delete Unit 1 & 2 [BSEP] Fire Protection Technical Specifications 3/4.3.5.7, 3/4.7.7.1, 3/4.7.7.2, 3/4.7.7.3, 3/4.7.7.4, 3/4.7.7.5, 3/4.7.8 and associated bases.

Basis

The change does not involve a significant hazards consideration for the following reasons:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. This is because the operability requirements of the fire protection features and surveillance requirements are not changing. Their control will be maintained in the Updated FSAR where changes must be evaluated in accordance with 10 CFR 50.59. Since this is a programmatic change there will not be an increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The requirement to maintain operability of the fire protection features and to perform surveillance requirements will be controlled in the Updated FSAR. Since this is an administrative type change, the possibility of a new or different kind of accident from any accident previously evaluated will not be created.

3. The proposed amendment does not involve a significant reduction in the margin of safety. Since the change is programmatic and administrative in nature and operability or surveillance requirements are not changing, this proposed change will not involve a reduction in the margin of safety.

Proposed Change No. 3:

Delete Unit 1 & 2 [BSEP] minimum Fire Brigade staffing requirement in Technical Specification 6.2.2g.

Basis

The change does not involve a significant hazards consideration for the following reasons:

1. The proposed amendment does not involve a significant increase in the probability or consequence of an accident previously evaluated. The current fire brigade staffing requirements will be administratively controlled and maintained in the Updated FSAR.

Therefore, the deletion of Technical Specification 6.2.2.g and the placement of the same requirement into the Updated FSAR will not increase the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident [from any accident] previously evaluated. The requirement to maintain the minimum staffing requirements

will be retained in the Updated FSAR instead of the Technical Specifications. Since this is an administrative type change, the possibility of a new or different kind of accident from any accident previously evaluated will not be created by this change.

3. The proposed amendment does not involve a significant reduction in the margin of safety. Since the staffing levels of the current requirements for the fire brigade are not being reduced, the proposed change will not involve a reduction in the margin of safety.

Proposed Change No. 4:

Delete Unit 1 & 2 [BSEP] Special Report requirements in Technical Specifications, 6.9.2, d, g, and h.

Basis

The change does not involve a significant hazards consideration for the following reasons:

1. The proposed amendment does not involve a significant increase in the probability or consequence of an accident previously evaluated. The reporting requirements proposed for deletion do not affect the operation of the facility. Existing compensatory action associated with the component specific action statements are being maintained in effect so the level of fire protection is unchanged. Therefore, this change will not increase the probability or consequences of an accident.

2. The proposed amendment does not create the possibility of a new or different kind of accident [from any accident] previously evaluated. As stated in Item 1 above, deletion of these special reports does not affect the operation of the facility. Consequently, the possibility of a new or different kind of accident [from any accident] previously evaluated will not be created by this change.

3. The proposed amendment does not involve a significant reduction in the margin of safety. As stated in Item 1 above, existing compensatory action associated with the component specific action statements are being maintained in effect so the level of fire protection is unchanged. Additionally, 10 CFR 50.72 and 10 CFR 50.73 provide criteria, that if met as a result of fire protection deficiencies, would require notification to NRC. Accordingly, this proposed change will not involve a reduction in the margin of safety.

The NRC staff has reviewed the 50.92(c) licensee's analysis as applying to both the Units 1 and 2 amendment requests and, based on this review, it appears that the three standards are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Carolina Power & Light Company, et al., Docket No. 50-324, Brunswick Steam Electric Plant, Unit 2, Brunswick County, North Carolina

Date of amendment request: February 19, 1991

Description of amendment request: The proposed amendment would revise the surveillance intervals for the 125 volt batteries and chargers associated with Technical Specifications (TS) 4.8.2.3.2.c and 4.8.2.3.2.d. Currently, the surveillances associated with these TS are due to be performed during the Brunswick Steam Electric Plant, Unit 2 (Brunswick), surveillance testing outage scheduled to begin in June 1991. This proposed amendment would allow a one-time only extension of these surveillances until the end of the Brunswick Reload 9 outage, currently scheduled for mid-November 1991. At that time, the 125 volt batteries will be replaced.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because the batteries will remain capable of performing their intended safety function during the requested extension of the 18-month surveillance interval. The last Technical Specification 4.8.2.3.2.e performance capacity test of the Unit 2 batteries was performed in March 1988, at which time the battery capacities were found to be as follows:

Battery 2A-1	100.28%
Battery 2A-2	102.55%
Battery 2B-1	104.80%
Battery 2B-2	111.30%

The Brunswick DC Load Study determined that the batteries can provide 100% of load requirements at 80% capacity (including temperature effects and design margin). Therefore, a minimum margin of 20% battery capacity remained as of the last capacity test.

The Brunswick batteries are also subjected to a service capacity test (Technical Specification 4.8.2.3.2.d) which is more stringent than the performance capacity test. This test demonstrates the batteries ability to provide loads above worst case DC system loading (simulated load profile). The service capacity test was last performed and successfully completed in September 1989. In addition to battery testing, the battery cell links were resistance tested and torqued to ensure optimum connections and the associated battery chargers were satisfactorily tested in accordance with Technical Specification requirements in September 1989.

Per discussions with the battery manufacturer, battery capacity drops from 100% to 80% can typically be expected to occur between 85% and 100% of their service life (a span of 3 years for the Brunswick batteries). The Brunswick batteries will reach 85% of their service life in 1991, therefore, it is expected that the capacity decline during the approximately 2 month surveillance interval extension will be minimal and will remain far above the 80% minimum. Based on previous testing and maintenance practices, the Unit 2 125/250 volt batteries and chargers should be fully capable of providing their designed safety function during the requested surveillance extension.

The normal weekly, month, and quarterly surveillances will continue as scheduled during this period. These surveillances (4.8.2.3.2.a and 4.8.2.3.2.b) require visual inspections and verification of electrolyte level, float voltage, and specific gravity. These weekly and monthly surveillances as well as the Company's practice of maintaining the batteries in accordance with IEEE-450, 1980 provide adequate assurance that the batteries will remain capable of performing their intended safety function during the requested surveillance interval extension.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed amendment only provides a one-time extension of the 18-month surveillance interval for the Unit 2 batteries. There is no change to the plant or its manner of operation. Also, there are no changes to the surveillance acceptance criteria. Therefore, the proposed change can not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety. As demonstrated in Item 1 above, the proposed one-time extension of the 18-month surveillance requirements for the Unit 2 batteries will not affect the ability of the batteries to perform their intended safety function. Per discussions with the battery manufacturer, battery capacity drops from 100% to 80% can typically be expected to occur between 85% and 100% of their service life (a span of 3 years for the Brunswick batteries). The Brunswick batteries will reach 85% of their service life in 1991, therefore, it is expected that the capacity decline during the approximately 2 month surveillance interval extension will be minimal and will remain far above the 80% minimum. Based on previous testing and maintenance practices, there is every indication that the Unit 2 125/250 volt batteries and chargers are fully capable of providing their designed safety function during the requested surveillance extension.

Granting this amendment will actually result in a slight improvement in the margin of safety because it will avoid the need to remove the batteries from service for a

significant portion of their remaining life (a total time of approximately 1 week during the remaining 2 months prior to their planned permanent removal) in order to perform a test which will not significantly increase the level of assurance in battery operability.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: January 7, 1991

Description of amendment request: The proposed amendment request would change the one-point calibration check of the excore nuclear power range detectors from a monthly interval to an interval of at least once per effective full power month (EFPM). The one-point calibration check is performed by comparing the axial flux difference (AFD) measured by a full- core flux map to that indicated by the power range excore detectors. Since a full-core map is currently required for thermal peaking limits surveillance at least once every EFPM, the proposed amendment will promote consistency and reduce the duty on the movable incore detector system. Currently, Westinghouse Standard Technical Specifications use a one EFPM surveillance criterion requirement for the performance of this calibration check as well.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility, in accordance with the proposed amendment, would not involve a significant increase in the probability or consequences of an accident previously analyzed because:

a. Operation of the reactor with a 1 EFPM excore detector calibration check surveillance interval will involve no changes in equipment, systems, or setpoints used in determining the probability of an evaluated accident. Therefore, no significant increase in the probability of previously evaluated accidents will occur.

b. Operation of the reactor with a 1 EFPM excore detector calibration check surveillance interval will not allow operation of the plant outside current limitations and restrictions. Thus, the consequences of an accident previously evaluated will not be significantly increased.

2. Operation of the facility in accordance with the the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated because operation of the reactor with a 1 EFPM excore detector calibration check surveillance interval will not allow operation of the plant outside any of the parameters or conditions assumed in Chapter 15 analyses. No changes in equipment, systems, or setpoints designed to prevent and/or mitigate accidents will be made. Also no changes to the plant design bases are made. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

3. Operation of the facility, in accordance with the proposed amendment, would not involve a significant reduction in a margin of safety because the margins of safety are defined in Chapter 15 analyses which make assumptions about the control of the core axial power distribution (by control of the AFD) within prescribed limitations and restrictions. Operation of the reactor with a 1 EFPM excore detector calibration check surveillance interval will not allow operation of the plant outside any of these restrictions. Therefore, no significant reduction in the margin of safety will occur.

The NRC staff has reviewed the licensee's 50.92(c) analysis and, based on this review, it appears that the three standards are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Commonwealth Edison Company, Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: December 19, 1990

Description of amendments request: The proposed amendment change would revise the Braidwood Unit 2 heatup and cooldown curves, the power operated relief valve Low-Temperature Overpressure Protection (LTOP) setpoints, and their bases. The proposed amendment would also shorten the applicability of the Braidwood Unit 1 heatup and cooldown curves.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1) The proposed change does not result in a significant increase in the probability or consequences of accidents previously evaluated, since the revision to the Unit 2 curves are in a more conservative direction. These changes are the result of reanalysis performed in accordance with Regulatory Guide 1.99 Revision 2. The shifting of these curves has no effect on the probability for occurrence of any accidents. The opening setpoint for cold overpressure protection will be at a lower level in order to meet 10 CFR 50 Appendix G limits. The shifting downward in Effective Full Power Years (EFPY) for Unit 1 ensures Appendix G limits will be met. New curves for Unit 1 will be generated later. Several changes are administrative in nature, thus have no impact on the probability or consequences of accidents.

2) The amendment change does not create the possibility for a new or different kind of accident from any accident previously evaluated because the change does not add equipment or change installed equipment operation. The new setpoints for the cold overpressure protection setpoints would allow normal heatup and cooldown operations without requiring programmatic changes. The proposed changes would place Unit 2 in compliance with the methodology of Regulatory Guide 1.99 Revision 2. Unit 1 has had the EFPY dates revised to ensure compliance until the new curves are generated.

3) The proposed amendment change does not involve a significant reduction in a margin of safety since the Unit 2 curves are shifted in the more conservative direction resulting on a lower opening setpoint for cold overpressure protection setpoints. This will be in accordance with Regulatory Guide 1.99 Revision 2. The reduced EFPY date for the Unit 1 curves will ensure all current limitations are met up to and including that date.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Attorney to licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: Richard J. Barrett

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: November 6, 1987, as supplemented on February 8, 1991

Description of amendments request: The proposed change will revise Technical Specification Tables 3.3-6 and 4.3-3, and designate the radiation monitors assigned to each train of control room ventilation (VC). Also, action statement 27 on page 3/4 3-41 will be revised to allow the option of running an operational VC train when one or more radiation monitors in the opposite VC train are inoperable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not result in a significant increase in the probability or consequence of accidents previously evaluated. The radiation monitors are designed to provide a response to a radiological incident. The operability of these monitors does not factor into the sequence of events required for a radiological release to the atmosphere to occur. They serve to initiate action to prevent a release from unacceptably impacting the Control Room; they do not prevent a release from occurring.

The subject radiation monitors function to isolate the Control Room Ventilation System (VC) outside air intakes in the event of a high radiation condition. Each train of the VC system is provided with redundant radiation monitors. Only one train of VC is operated at a time. The proposed change would allow the operation of a train of VC with a full complement of radiation monitors in the normal configuration. Assuming a limiting scenario of the plant operating with degraded monitoring on the idle VC train with the occurrence of a radioactive release and subsequent failure of the running train, the idle train could be started. This train would still have a single radiation monitor available. If the initiating event resulted in a Safety Injection signal, the ventilation system would automatically align to the post-accident mode. This provides a diverse means of providing radiological protection for the Control Room. The proposed change does not alter the manner in which the actuation signal is provided, nor does it have an impact on the response of the VC system to a valid actuation signal.

The proposed change does not create the possibility for a new or different kind of accident from any accident previously evaluated. The proposed change does not introduce any new or different equipment, and it will not result in installed equipment being operated in a new or different manner. The change will allow the operation of a fully operable train of VC, rather than require that a train with degraded monitoring be operated in its post-accident configuration. The monitors are designed to fail in a safe condition, so required system configuration or operation are not precluded.

The proposed change does not involve a significant reduction in a margin of safety. The proposed change allows the operation of a VC train with full radiation monitoring capability. In the event there is one monitor per train inoperable, the change does not render the plant vulnerable to a single failure which would result in the overexposure of control room personnel. Additionally, the Control Room is equipped with Area Radiation Monitors which provide an alarm upon detection of a high radiation condition. As such, sufficient means will remain available to ensure that the VC system is capable of being both automatically and manually aligned to provide for the mitigation of radiological events.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: For Byron, the Byron Public Library, 109 N. Franklin, P. O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: Richard J. Barrett

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: November 30, 1988 as supplemented on May 30, 1990

Description of amendments request: The proposed amendment would revise Technical Specification (TS) 3.0.4, 4.0.3 and 4.0.4 and those TSs that are affected by these sections. The amendments are based on the recommendations provided by the staff in Generic Letter (GL) 87-09, issued May 4, 1987, to solve three problems that have been encountered with the general requirements on the applicability of Limiting Conditions for Operation and Surveillance Requirements in Sections 3.0 and 4.0 of the TSs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes involve Technical Specifications 3.0.4, 4.0.3 and 4.0.4, plus those technical specifications that are affected by these sections. These changes are being made and requested in accordance with NRC Generic Letter 87-09, issued on May 4, 1987.

The first change involves Specification 3.0.4, its bases, and associated Technical Specifications that reference it. Inconsistent application of exceptions to Specification 3.0.4 impacts the operation of the facility in two ways. First, it delays startup under conditions in which conformance to the Action Requirements establishes an acceptable level of safety for unlimited continued operation of the facility. Second, it delays a return to power operation when the facility is required to be in a lower mode of operation as a consequence of other Action Requirements. In this case, the Limiting Condition for Operation must be met without reliance on the Action Requirements, before returning the facility to that operational mode or other specified condition for which unlimited continued operation was previously permitted, in accordance with the Action Requirements. As a consequence of the change to Specification 3.0.4, Specifications with Action Requirements that permit continued operations no longer need to reference "3.0.4 is not applicable".

The second and third changes involved Specifications 4.0.3 and 4.0.4. Some Action Requirements have allowable outage time limits that do not allow sufficient time for the completion of a missed surveillance, before the Action Requirements would necessitate a plant shutdown. If a plant shutdown is required before a missed surveillance is completed, it is likely that the surveillance would be conducted during the shutdown in an effort to terminate the shutdown requirement. This circumstance is undesirable for two reasons:

(a) increased pressures on plant staff to complete the surveillance could lead to errors that may result in plant upset, and

(b) the plant would be in a transient state involving potential upsets to the plant that could require a demand for the system when the system is removed from service for testing.

The proposed changes will also help clarify the potential conflicts between Specifications 4.0.3 and 4.0.4. The first conflict could arise when a plant shutdown is required as a consequence of an Action Requirement. This will require surveillances to become due prior

to entry into a lower mode. This could result in delays reaching lower modes as a result of a Technical Specification Action Requirement.

The second conflict could arise when Surveillance Requirements can only be completed after entry into a mode or specified condition for which the Surveillance Requirements apply, and an exception to the requirements of Specification 4.0.4 is allowed. However, upon entry into this mode or condition, the requirements of Specification 4.0.3 may not be met because the Surveillance Requirements may not have been performed within the allowed surveillance interval. Allowing for a delay in the applicability of Action Requirements for Specification 4.0.3 will provide an appropriate time limit for the completion of Surveillance Requirements that are allowed an exception to Specifica tion 4.0.4. It has been noted that some surveillances that state "4.0.4 not applicable", do involve performance times in excess of the 24 hours allowed by this change and Generic Letter 87-09. These specific surveillances have been identified, and changes are proposed to bound the conditions required to perform the surveillance, as well as limits for completion of the surveillance. This should provide an acceptable means to establish required conditions, as well as set a reasonable completion requirement.

The fourth change involves a revision to the incore-excore surveillance frequency. Currently, the single point comparison of incore to excore axial flux difference and the incore excore calibra tions are being performed every 31 and 92 days respectively. These checks and calibrations are core exposure related parameters. In the case of an extended period of low power operations or outages, re-performance of these surveillances would not be warranted. The proposed revision will change the frequency of these surveillances from a fixed frequency to an exposure related frequency. This change has been previously reviewed and approved for Vogtle Unit 1.

The proposed changes do not increase the probability or consequences of a accident previously evaluated. In regards to the first change, systems and equipment that have indefinite allowable outage times have been shown not to have a direct impact on accidents. In regards to the second and third change, surveillance requirements are defined in 10 CFR 50.36 as those requirements that assure the necessary quality of systems and components are maintained such that safety limits are maintained and limiting conditions for operation are met under these changes. The appropriate surveillances will still be performed. The proposed changes will only allow flexibility in performing these surveillance requirements prior to a plant shutdown being necessitated in the case of a surveillance being inadvertently missed.

The conditions and bounding limits proposed on severa! surveillances are necessary due to the fact that these surveillances cannot be completed within 24 hours of entry into the required mode. These surveillances in some cases require specific power levels and stability to perform. The limitations chosen do not differ from the present method in which these surveillances are performed. Limitations are specified to ensure surveillance completion.

In regards to the fourth change, the required surveillances will still be performed. The bases for these surveillances is to calibrate and check the calibration of the excore instruments using the incore instruments. These checks and calibration are required due to shifting flux profiles due to flux redistribution. Flux redistribution is primarily a function of core depletion and not time. The proposed change will tie the performance of these surveillances to a direct measurement of core depletion.

The proposed changes do not create the possibility of a new or different kind of accident form any accident previously evaluated. No new equipment is being introduced as a result of the changes. These changes do not result in equipment being operated in a manner different from present requirements. No change is being made which alters the function of any plant equipment.

The proposed changes do not involve a significant reduction in a margin of safety. In regards to the first change, conformance to Action Requirements that permit continued operation of the facility have been shown to provide an acceptable level of safety for indefinite operation. In regards to the second and third changes, allowing an appropriate time period for performance of a missed surveillance, a surveillance required by entry into an action statement or performance of one precluded by plant conditions, would in effect reduce the possibility for a potential plant upset. In regards to the fourth change, the surveillance frequencies involved are changes due to the parameters being core depletion dependent. The best measure for this is in effective full power days. Hence, the proposed change will not reduce the margin of safety, based on its performance being tied to a depletion based frequency.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: For Byron, the Byron Public Library, 109 N. Franklin, P. O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: Richard J. Barrett

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: December 7, 1990

Description of amendment request: The proposed amendment would revise the Palisades Plant Technical Specification Tables 3.16.1, 3.17.3 and 4.1.2, to permit automatic isolation of the main feedwater system upon either a high containment pressure or low steam generator pressure signal.

Table 3.16.1, "Engineered Safety Features System Initiation Instrument Setting Limits," shall be modified with a subparagraph and footnote referring to the main feedwater isolation added to both High Containment Pressure and Low Steam Generator Pressure paragraphs.

Table 3.17.3, "Instrument Operating Conditions for Insertion Functions," shall be modified with a subparagraph referring to containment high pressure added to the paragraph on Steam Line Isolation. Also, a paragraph and footnote referring to Main Feedwater Isolation is added to the Table.

Table 4.1.2, "Minimum Frequencies for Checks, Calibrations and Testing of Engineered Safety Feature Instrumentation Controls," shall be modified with an added paragraph referring to Main Feedwater Isolation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

This change does not significantly increase the probability of an accident previously evaluated because it only effects operation after an accident has occurred. Testing and operation of the new functions are in accordance with approved plant procedures; therefore, there will not significantly increase the probability of the loss of feedwater accident which has been previously addressed. This change does not increase the consequences of an accident previously evaluated because it adds containment high pressure and low steam generator pressure as conditions which will cause isolation of main feedwater to assure main feedwater will be rapidly isolated and thus result in containment pressure remaining below design pressure limits after a main steam line break. This change reduces the consequences of an accident (MSLB) previously evaluated.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

This change does not create the possibility of a new or different kind of accident previously evaluated since it favorably effects the ability to safely shutdown after an accident has occurred and uses previously evaluated existing equipment to perform the valve closure isolation function. This change does not effect operation before an accident.

(3) Involve a significant reduction in the margin of safety.

This change does not involve a significant reduction in the margin of safety because the margin of safety which this change involves is the pressure difference between the containment design pressure limit of 55 psig and the pressure at which the containment pressure boundary would fail. This change assures that containment pressure will stay below the containment design pressure limit of 55 psig after a worst-case main steam line break.

The staff has reviewed the licensee's analysis and, based on this review it appears that the standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Judd L. Bacon, Esq., Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: L. B. Marsh.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: December 28, 1990, as amended January 17, 1991.

Description of amendment request: The proposed amendment would change Palisades Plant Technical Specifications (TS) Section 3.1.7.a such that the three pressurizer safety valves would have their lift set point tolerance increased from ±1% to ±3%. Also changed would be the sixth paragraph of TS Section 3.1.7 Basis to address the aforementioned tolerance increase. The final change requested is the addition of a reference to TS Section 3.1.7 that analyzes the tolerance increase.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(1) Does the change involve a significant increase in the probability or consequences of an accident previously evaluated.

Increasing the set point tolerance of the pressurizer safety valves does not significantly affect the probability of an accident, because the safety valve function is only required after an accident has occurred.

The consequences of events and an accident which could potentially challenge the pressurizer safety valves (loss of load, loss of normal feedwater, and control rod ejection) have been reanalyzed using the proposed ±3% set point tolerance. In neither, the loss of load event nor the loss of normal feedwater event are the Technical Specifications (TS) limits exceeded. The control rod ejection accident does not challenge the safety valves and, thus, is not affected by the change in set point tolerance. Since TS criteria remain satisfied for each of the three events, the consequences of an accident previously evaluated are not significantly increased by increasing the pressurizer safety valve set point tolerance to ±3%.

2. Does the changes create the possibility of a new or different kind of accident from any accident previously evaluated.

Increasing the set point tolerance of the pressurizer safety valves to ±3% does not affect the plant operations, since the safety valves would open only after an event has occurred. Additionally, changing the safety valve set point tolerance from ±1% to ±3% will not have a significant effect on the valve mounting on the pressurizer vessel. The result of an analysis of the effects of increased exhaust thrust shows the associated pipe and nozzle stresses meet design requirements. Since this change does not affect operations and does not cause associated pipe and nozzle stresses to exceed design criteria, it does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in the margin of safety.

This change does not involve a significant reduction in the margin of safety because the two margins of safety that could potentially be affected by this change, the minimum departure from nucleate boiling ratio (MDNBR) and primary coolant system (PCS) pressure are not caused to exceed existing TS criteria. Three events or accidents, loss of external load, loss of normal feedwater, and control rod ejection were analyzed using the proposed ±3% set point tolerance. The PCS pressure postulated in the control rod ejection accident remains lower than the valve set points. In the loss of load and loss of normal feedwater events, the MDNBR stays greater than or equal to the TS limit and the PCS pressure remains below the TS maximum pressure limit.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Judd L. Bacon, Esq., Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: L. B. Marsh.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of amendment request: August 20, 1990

Description of amendment request: The amendment revises the Technical Specifications by implementing an expanded operating domain.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

Proposed Change Number 1

Delete the flow-biased APRM scram and rod block trip setpoint setdown requirements, delete reference to the k_f flow adjustment factor, introduce power and flow dependent adjustment factors to the Average Planar Linear Heat Generator Rate (APLHGR) and Minimum Critical Power Ratio (MCPR) limits.

Basis

The change does not involve a significant hazards consideration for the following reasons:

(1) Changes in the operating limit values will maintain existing margins to the safety limit. Operations within the operating limit will ensure that the consequences of any accident which could occur would be within acceptable limits. There will be no impact on the probability of any accident previously evaluated since the change applies a new methodology for assuring that the fuel thermal and mechanical design bases are satisfied and has no effect upon any accident initiating mechanism. The proposed change causes adjustments to be made to the MCPR and APLHGR limits as specified in the Core Operating Limits Report (COLR) as functions of core flow and power. These adjustments are determined using NRC approved methods as required by the Technical Specification requirements for the COLR. The adjustments impose restrictive conditions on plant operation such that the consequences of anticipated operational occurrences are no more severe than the most limiting condition using the current Technical Specifications with flow-biased APRM scram and rod block setpoint setdown provisions. Thus, there is no significant change in the consequences of any accident previously evaluated.

(2) The proposed change eliminates the reqquirement for setdown of the flow-biased APRM scram and rod block trip setpoints under specified conditions and substitutes adjustment factors for the MCPR and APLHGR operating limits. The proposed change provides a new method of limiting plant operation so that the fuel thermal and mechanical design bases are satisfied. The change does not cause a physical change to the plant or introduce a new mode of operation. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The flow and power adjustment factors were determined using NRC approved methods and satisfy the same NRC approved criteria met by analyses assuming setdown of the flow-biased APRM scram and rod block setpoints. Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

Proposed Change Number 2

Modify the flow-biased APRM scram and rod block tip equations to accommodate an expanded operating domain.

Basis

The change does not involve a significant hazards consideration for the following reasons:

(1) The proposed change expands the power and flow operating domain by relaxing the restrictions imposed by the formulation of the flow-biased APRM rod block and scram trip setpoints. The probability of any accident is not significantly increased by operating in the expanded operating domain because the formulation of the flow-biased APRM rod block trip equation (including a new maximum value for the APRM rod block) has been modified to still maintain sufficient margin between the rod block setpoint and the scram setpoint. The consequences of anticipated operation occurrences have been evaluated using NRC approved methods and the proposed setpoint formulations have been selected so as not to involve a significant increase in the consequences of any accident.

(2) Changing the formulation for the flow-biased APRM rod block and scram trip setpoints does not change their respective functions and manner of operation. The APRM rod block trip setpoint will continue to block control rod withdrawal when core power significantly exceeds normal limits and approaches the scram level. The APRM scram trip setpoint will continue to initiate a scram if the increasing power/flow condition continues beyond the APRM rod block setpoint. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The APRM rod block trip setpoint will continue to block control rod withdrawal when core power significantly exceeds normal limits and approaches the scram level. The APRM scram trip setpoint will continue to initiate a scram if the increasing power/flow condition continues beyond the APRM rod block setpoint. Operation in the expanded operating domain has been analyzed by General Electric and sufficient margin to design limits was found to exist. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Proposed Change Number 3

Modify the RBM trip setpoints and RBM system operability requirements and relocate the RBM trip setpoints to the Core Operating Limits Report (COLR).

Basis

The change does not involve a significant hazards consideration for the following reasons:

(1) The RBM system is not involved in the initiation of any accident and therefore does not increase the probability of the occurrence of any accident. The RBM system only serves to mitigate the consequences of one event; the rod withdrawal error (RWE) event. Analyses of the RWE were performed using NRC approved methods for the modified setpoints and operability requirements. The results demonstrate that the consequences of the RWE event are no more severe with the modified RBM system than with the current configuration. Therefore, the proposed change does not involve a significant increase in the consequences of any accident previously evaluated.

(2) The proposed change does not alter the function of any component or system other than the RBM system. The changes to the RBM system have been designed to enhance the reliability and accuracy of the RBM system without impacting the degree of isolation of the RBM system from other plant systems. The function of the RBM system does not change. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed change revises the setpoints for the RBM system which is soley designed to mitigate the consequences of the RWE event. Analyses of the RWE event are used to derive the setpoints such the the safety limit for the minimum critical power ratio (MCPR) will not be challenged. By an appropriate selection of the setpoints, the RWE will not be the limiting event and will not determine the operating limit MCPR. In this respect, the RBM setpoints are dependent upon the operating limit MCPR values which depend on the cycle-specific conditions. For this reason, the proposed change also identifies that these setpoints are specified in the Core Operating Limits Report (COLR). The COLR is prepared based on the results of analyses using NRC approved methods as required by Technical Specification requirements for the COLR. The operating limit MCPR maintains the margin of safety for this thermal limit. Thus, the proposed change does not involve a significant reduction in a margin of safety.

Proposed Change Number 4

Modify setpoints associated with the recirculation system flow to accommodate core flow greater than rated.

Basis

The change does not involve a significant hazards consideration for the following reasons:

(1) The proposed change expands the power and flow operating domain by relaxing the restrictions imposed by the Reactor Coolant System Flow Upscale rod block and Reactor Recirculation set scoop tube setpoints. The probability of any accident is not significantly increased by operating at a higher core flow because the Reactor Coolant System Flow Upscale rod block and Reactor Recirculation Set scoop tube setpoints have been modified to provide the same protection as currently exists. The consequences of anticipated operational occurrences have been evaluated using NRC approved methods and the proposed setpoints have been selected so as not to involve a significant increase in the consequences of any accident.

(2) Changing the Reactor Coolant System Flow Upscale rod block and Reactor Recirculation Set scoop tube setpoints does not change their respective functions. The Reactor Coolant System Flow Upscale rod block trip setpoint will continue to block control rod withdrawal when core flow significantly exceeds design bases. The Reactor Recirculation Set scoop tube settings will continue to terminate a flow increase significantly leaving the licensed operating domain. The proposed change does not affect the manner of plant operation within the new limits. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) As stated above, the Reactor Coolant System Flow Upscale rod block and Reactor Recirculation Set scoop tube setpoints will continue to perform their respective functions. Operation with increased core flow, as allowed by these setpoint changes, was analyzed by General Electric and sufficient margins to design limits were found to exist. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Project Director: L. B. Marsh.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of amendment request: January 28, 1991

Description of amendment request: The amendment revises the Technical Specifications Table 3.6.3-1, "Primary Containment Isolation Valves," by renumbering two primary containment isolation valves.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

The proposed change modifies the valve numbers listed in Technical Specification Table 3.6.3-1, Primary Containment Isolation Valves, associated with two primary containment isolation valves. The two valves are manually operated from the Fermi 2 Control Room and are located in the Emergency Equipment Cooling Water supply and return to drywell equipment.

The valves are being renumbered to enhance the Control Room design by making the valve numbering consistent between divisions. The change is strictly administrative and does not affect any of the functions of the two valves, including the containment isolation function. Therefore, the proposed change does not:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

3) Involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this

review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Project Director: L. B. Marsh.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: January 30, 1991

Description of amendment request: The proposed changes would add another position to the list of positions designated to review and approve administrative procedures governing the implementation of offsite environmental, technical, and laboratory activities.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

The proposed amendments would change the administrative controls governing the review and approval of Applied Science Center procedures which implement offsite environmental, technical, and laboratory activities. The amendments would supplement the current requirement that these procedures be reviewed and approved by station management by allowing them to be approved by the Production Support Department management that has authority and responsibility concerning their use.

The proposed amendments would not involve an increase in the probability or consequences of an accident previously evaluated. The amendments have no impact upon station operation and do not involve any changes to the design or operation of any equipment. The activities that are governed by the affected Applied Science Center procedures are performed offsite in support of the stations. These include, but are not limited to, environmental sample collection procedures, procedures for laboratory sample preparation and disposal, preparation of reagents, and count room procedures. The proposed changes would result in procedures of higher quality, since final responsibility for procedures review and approval would reside with management who is most thoroughly familiar with the technical issues involved.

The proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated. The changes do not have any impact upon the design or operation of plant equipment; therefore, they cannot serve to initiate a new type of accident.

The proposed amendments would not involve a reduction in a margin of safety. The changes would not impact the design or operation of any plant systems or components. Improved Applied Science Center procedures will result in enhanced offsite environmental, technical, and laboratory activities.

Based upon the preceding analysis, Duke Power Company concludes that the proposed amendments do not involve a Significant Hazards Consideration.

The Commission's staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 10 CFR 50.92 are satisfied. Therefore, the Commission's staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: David B. Matthews

Duke Power Company, Docket Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units 1, 2 and 3, Oconee County, South Carolina

Date of amendment request: January 16, 1991

Description of amendment request: The proposed amendment would revise fire protection requirements in the Technical Specifications (TSs) and associated bases, in accordance with staff guidance provided by NRC Generic Letters (GLs) 88-12 and 86-10. The proposed changes relocate specifications relating to Fire Protection and Deletion Systems, Shift fire brigade staffing requirements and fire protection reporting requirements to Chapter 16 of the Final Safety Analysis Report (FSAR), "Selected Licensee Commitment Manual."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

This TS amendment is proposed to implement GL 86-10, Implementation of Fire Protection Requirements. The proposed amendment follows the guidelines given in GL 88-12, Removal of Fire Protection Requirements from the Technical Specifications. This change is administrative, in that none of the technical requirements are being changed. The proposed change removes the existing requirements from the TSs and places them in FSAR Chapter 16. In addition, the proposed standard fire protection license condition would assure that any future changes to the Oconee Fire Protection Program would not adversely affect the ability to achieve and maintain safe shut down in the event of a fire. Since the technical content of the Fire Protection requirements has not changed, this amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Use of the modified specification would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The changes to the Fire Protection Requirements in this proposed amendment are administrative. Since the technical requirements have not changed, this amendment does not create the possibility of a new or different type of accident from any previously evaluated.

(3) Use of the modified specifications would not involve a significant reduction in a margin of safety.

The technical requirements for Fire Protection will be relocated from the TSs to the FSAR Chapter 16. These requirements will be submitted and incorporated in Chapter 16 of the FSAR following the approval of this amendment request. Because requirements will not change, operating and testing procedures will remain the same. Plant procedures, which already exist, will continue to provide the specific instructions for implementing Limiting Conditions for Operation, Actions, and Surveillance Requirements. Since the technical requirements are not changing, this change does not involve a significant reduction in the margin of safety.

The Commission's staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 10 CFR 50.92 are satisfied. Therefore, the Commission's staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Attorney for licensee: J. Michael McGarry, III, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20036

NRC Project Director: David B. Matthews

Entergy Operations, Inc., Docket Nos. 50-313 and 50-368, Arkansas Nuclear One, Unit Nos. 1 and 2 (ANO-1&2), Pope County, Arkansas

Date of amendment request: February 20, 1991.

Description of amendment request: The proposed amendment would revise Table 6.2-1 of the Administrative

sections of the ANO-1 and ANO-2 Technical Specifications to increase the number of licensed and non-licensed operators required when either unit is in a mode above cold shutdown.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change increases the required number of both licensed and non-licensed operators required to be on shift to conform to 10CFR50.54 and our commitment. This change is conservative with respect to the requirements of 10CFR50.54 and therefore does not involve an increase in the probability or consequences of an accident previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed changes are administrative in nature, not accident related and, therefore, does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in the Margin of Safety.

As this proposed change will increase the number of operators available to respond to an abnormal or transient situation, the margin of safety will not be reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: Theordore R. Quay

GPU Nuclear Corporation, Docket No. 50-320, Three Mile Island Nuclear Station, Unit No. 2, (TMI-2), Dauphin County, Pennsylvania

Date of amendment request: June 27, 1989

Description of amendment request: The proposed amendment would revise TMI-2 Operating License No. DPR-72 by modifying the Appendix A Technical Specification by deleting the Deputy Director position required by Section 6.1, Responsibility. Section 6.1 states that the Office of the Director - TMI-2 consists of the Director - TMI-2 and the Deputy Director - TMI-2. The licensee proposes deleting the requirement for a Deputy Director - TMI-2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

10 CFR 50.92 provides the criteria which the Commission uses to evaluate a No Significant Hazards Consideration. 10 CFR 50.92 states that an amendment to a facility license involves No Significant Hazards if operation of the facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated, or
2. Create the possibility of a new or different kind of accident from any accident previously evaluated, or
3. Involve a significant reduction in a margin of safety.

This proposal deletes a support position in the Office of Director - TMI-2. This position was originally established early in the cleanup program to ensure effective oversight of the myriad of activities that were occurring in preparation of defueling the Reactor Vessel. As the cleanup program approaches completion, with an attendant reduction in the level of activities, the need for this additional oversight is no long extant.

This change would not involve a significant increase in the probability or consequences of an accident nor create the possibility of a new or different kind of accident because the change involves administration of the cleanup effort and not direct supervision of the unit's systems and components. This change would not involve a significant reduction of the margin of safety since it has been demonstrated that effective management oversight of the remaining cleanup activities is being provided under the proposed organizational structure. Based on the above, GPU Nuclear concludes that No Significant Hazards is involved in this proposed change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601 Harrisburg, Pennsylvania 17105

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037

NRC Project Director: Seymour H. Weiss

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: October 4, 1990

Description of amendment request: This amendment would remove a high range radiation detector (RM-G8) from the Technical Specifications and add a reporting requirement in the event of an inoperable condenser vent stack iodine monitor.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Monitor RM-G8 was not designed to support normal plant operation. RM-G8 is a high range radiation monitor located in the containment dome which provides indication of post-accident radiation levels. Removal of RM-G8 has no effect on the probability of occurrence of an accident previously evaluated.

Because the [condenser vent stack iodine monitor] and sampling capability are independent of nuclear plant operation, the proposed revised surveillance action requirement does not increase the probability of occurrence or the consequences of an accident or malfunction previously evaluated. A new or different type of accident or malfunction is not created which differs from any previously evaluated.

Monitors RM-G22 and RM-G23 were installed in response to NUREG-0737 to provide diagnostic information regarding high radiation levels in containment following a design basis accident. Monitors RM-G22 and RM-G23 satisfy Regulatory Guide 1.97 requirements, exceed the post accident capabilities provided by RM-G8 and are considered suitable replacements for RM-G8. Technical Specifications 3.5.5 and 4.1.3 ensure the functional capability of these monitors. Therefore removal of RM-G8 from the plant and from the Technical Specifications has no impact on the consequences of an accident previously evaluated.

As discussed above, use of the proposed monitoring would not create the possibility of a new or different type of accident from any accident previously evaluated. Neither will use of the proposed monitors involve a significant reduction in a margin of safety. The margin of safety for the proposed monitors is no less than that afforded by the existing Technical Specifications.

The proposed revised surveillance requirement [for the iodine monitor] does not reduce the margin of safety afforded by this Technical Specification limit; rather, it provides an additional administrative control to ensure and demonstrate that this limit is not exceeded. Use of the revised surveillance action requirement does not involve a reduction in a margin of safety.

The NRC staff reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW, Washington, D.C. 20037.

NRC Project Director: John F. Stolz

Long Island Lighting Company, Docket No. 50-322, Shoreham Nuclear Power Station, Unit 1, Suffolk County, New York

Date of amendment request: June 28, 1990

Description of amendment request: The proposed amendment would authorize the transfer of ownership of the Shoreham license, Facility Operating License, NPF-82 from the Long Island Lighting Company (LILCO) (the licensee) to the Long Island Power Authority (LIPA) upon or after amendment of the license to a non-operating status. Amendment of the license to a non-operating status is a separate matter which was previously noticed and is not indebted in the amendment here proposed.

Basis for proposed no significant hazards consideration determination:

A. The Proposed Amendment Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

LILCO has previously prepared and submitted a Defueled Safety Analysis Report (DSAR) containing revised safety analyses that address the defueled and permanent non-operating conditions proposed for Shoreham, and reflect the activities proposed to be conducted by LIPA under the transferred license (i.e., maintenance of the defueled facility) prior to NRC approval of a Shoreham decommissioning plan. The DSAR analyses demonstrate that the plant conditions and licensed responsibilities, to be assumed by LIPA, represent a substantially reduced radiological risk from that associated with full power operation of Shoreham as previously evaluated in the Shoreham Updated Safety Analysis Report (USAR). The DSAR basically establishes that only two events from the spectrum of accidents previously evaluated in the USAR remain relevant to the defueled plant configuration. These events are the Fuel Handling Accident and the Liquid Radwaste Tank Rupture.

The proposed license amendment will not significantly increase either the probabilities or the consequences of these two events. Specifically, there will be no physical changes to the facility resulting from the proposed amendment. The reactor will not be refueled, and LIPA has stated that any fuel handling operations which may be associated with potential disposition of the existing Shoreham fuel will be performed by certified personnel, using existing equipment, in accordance with approved fuel handling procedures. The existing fuel will not be further irradiated, and no new or different fuel will be received at Shoreham. Should plans be developed for storage of the existing fuel in any onsite location other than the Spent Fuel Storage Pool where it currently resides, an appropriate license application or license amendment application will be submitted for prior NRC approval. Also, all License Conditions, Technical Specification Limiting Conditions for Fuel Handling Operations, Surveillance Requirements, and Technical Specification Programs as proposed by LILCO in the DSAR submittal (subject to modification by the NRC) will remain unchanged by this amendment. On this basis, the probability of a Fuel Handling Accident as postulated in the DSAR would not be increased.

Regarding Fuel Handling Accident consequences, the DSAR postulated a worst-case scenario wherein all gaseous fission products contained in the entire low burn-up Shoreham core were released to the environment without filtration. This scenario represents the maximum potential consequences of a Fuel Handling Accident at Shoreham given the LIPA commitment not to further irradiate the existing fuel or add more fuel at the Shoreham site. On this basis, there is no possibility for activities under the transferred license to result in any increase in the consequences of a Fuel Handling Accident.

The Liquid Radwaste Tank Rupture event as postulated in the USAR involves the simultaneous failure of all radwaste storage tanks and evaporators in, or associated with, the Radwaste Building. The tanks and evaporators are assumed to be full at the time of failure, and the source term is assumed to consist of radioactive iodine in concentrations corresponding to continued plant operation with fuel defects. The DSAR version of this scenario reflects the elimination of several components which are no longer required, and substitutes a conservative estimate of the actual existing radioactive source terms in the remaining tanks. The resulting calculated doses in the DSAR analysis are orders of magnitude below the USAR estimated doses, which were themselves within applicable limits.

The proposed amendment would not involve any changes to Shoreham's radwaste systems, and continued radwaste processing could not significantly increase the source terms in the radwaste systems because of the overall low levels of plant contamination. Thus, there would be no significant increase in either the probabilities or consequences of a Liquid Radwaste Tank Rupture event as evaluated in the USAR.

Beyond these two events, plant operating and emergency procedures, as applicable to the limited licensed activities, will not be changed in any substantive way. The existing NRC-approved quality assurance program, emergency plan, security plans, environmental programs, health physics program and other programs, as modified by LILCO's DSAR and related submittals, will be adapted to reflect LIPA's assumption of licensed responsibility.

There is not any significant increase in probability or consequence of relevant accidents previously evaluated.

B. The Proposed Amendment Will Not Create the Possibility of a New or Different Kind of Accident from Any Accident Previously Evaluated.

The current plant safety analyses, including LILCO's Radiological Safety Analysis for Spent Fuel Storage and Handling and its DSAR, remain complete and accurate in addressing the relevant licensing basis events and in analyzing plant response and consequences.

Under the proposed amendment, there will be no modifications made to the facility which could alter the applicable events as previously evaluated in the above LILCO analyses, or which could create new events of radiological concern. The activities to be conducted under the transferred license will not involve further irradiation of the existing fuel nor receipt of additional fuel. Activities will be oriented toward maintenance of the facility in the defueled condition until a decommissioning plan is approved by the NRC. As such, LIPA has stated that activities will be consistent with those currently being conducted at Shoreham, and will be performed in accordance with appropriate procedures. The plant conditions for which the revised accident analyses have been performed will remain valid.

As noted above, Shoreham programs, plans, procedures and Technical Specifications as modified by LILCO's DSAR and related submittals will be adapted to reflect ownership by LIPA. Furthermore, LIPA has committed to either have personnel with sufficient experience and qualifications to manage and conduct licensed activities or to procure qualified contractors support for particular tasks at the plant.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident than previously evaluated.

C. The Proposed Amendment Does Not Involve a Significant Reduction in a Margin of Safety.

Plant safety margins applicable to the defueled, non-operating condition of Shoreham are established in LILCO's DSAR and associated proposed Technical Specification amendments, as well as in the applicable programs, plans and procedures referenced therein. The proposed license amendment will entail the transfer of all responsibilities and obligations associated with these documents to LIPA; therefore, LIPA's activities at Shoreham will be consistent with the safety margins established therein. In particular, because the activities to be conducted by LIPA prior to decommissioning plan approval will be limited to continued maintenance of Shoreham in the defueled condition, with no further irradiation of the existing fuel, there will be no reduction in any plant safety margins. LIPA will be required to satisfy the technical and financial qualifications pursuant to the provisions of 10 CFR 50.80 to ensure LIPA's capability of maintaining these margins.

Local Public Document Room location: Shoreham-Wading River Public Library, Route 25A, Shoreham, New York 11786-9697

Attorney for licensee: W. Taylor Reveley, III, Esq., Hunton and Williams, P. O. Box 1535, Richmond, Virginia 23212

NRC Project Director: Seymour H. Weiss

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of amendment request: February 28, 1991

Description of amendment request: The proposed changes to the Technical Specifications (TS) would: (1) delete the shutdown margin demonstration requirement of TS 3/4.3.A.1 from several Limiting Conditions for Operations, (2) limit the number of control rods that can be withdrawn/decoupled in TS 3.3, to one control rod, (3) change the system description "liquid poison system" in TS 3.4, to "standby liquid control system", (4) allow testing of safety/relief valves (SRVs) and automatic pressure relief (APR) valves at higher pressures in TS 4.6.E.3 and 4.5.D.1.b, respectively, and (5) delete the "valve position indication" option from the SRV operability test of TS 4.6.E.3.

Basis for proposed no significant hazards consideration determination: Millstone Unit 1 TS 3/4.3.A, "Reactivity Control" requires a demonstration of shutdown margin and is performed following a refueling outage. Subsequent assurance of shutdown margin is obtained via analyses. In the following TS, however, there is an implication that additional shutdown margin demonstrations, per TS 3/4.3.A are required in the event that the subject equipment is inoperable or not needed: (1) TS 3.3.B.1 and 2, "Control Rod Withdrawal", (2) TS 3.4, "Standby Liquid Control System," and (3) TS 3.7, "Containment". In each of the aforementioned TS, the licensee has proposed removing the phrase "Specification 3.3.A.1 is met" and inserting the phrase "all control rods are fully inserted and the reactor is verified subcritical." Thus, rather than verify shutdown margin exclusively via demonstration (per TS 3/4.3.A), the revised TS would rely on demonstration of shutdown margin at the beginning of the fuel cycle and thereafter via analyses.

The licensee has also proposed a change to TS 3.3 that would decrease the number of control rods that can be withdrawn and decoupled, from one per quadrant, to one at a time.

With regard to SRV and APR valve testing, TS 4.5.D.1.b and 4.6.E.3 specify that each cycle, with the reactor at low pressure, the relief valves are to be manually opened and operability verified. The proposed changes would allow testing at high pressure during the initial start-up from the refuel outage within 24 hours of the mode switch being placed in the RUN position with reactor power less than 25 percent of rated. In addition, the option of using the valve position indication system would be deleted from Section 4.6.E.3.

The licensee has proposed a change in terminology in TS 3.4. The system addressed in TS 3.4 is the "standby liquid control system". In one phase in TS 3.4.A, the subject system is referred to as the "liquid poison system". The licensee has proposed changing "liquid poison system" to "standby liquid control system" in TS 3.4.A to achieve consistency within the TS.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

(1) The proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Deleting the shutdown margin demonstration does not decrease the degree of assurance that the shutdown margin will be maintained. The substitution of analytically obtained data for experimental determination of shutdown margin is an accepted principle since these analyses have shown themselves to be suitably conservative. In addition, with regard to decreasing the total number of allowable control rods that can be withdrawn and decoupled, the licensee's proposal to limit the number of control rods that can be withdrawn and decoupled from one drive per quadrant to one drive at a time, is more conservative in that it decreases the probability of inadvertent criticality. Accordingly, neither the probability or consequences of accidents involving shutdown margin will increase.

The change in system description in TS 3.4, from "liquid poison system' to "standby liquid control system" is an administrative change to the TS that is proposed to achieve consistency within the TS and therefore the change will not increase the probability or consequences of accidents previously evaluated.

With regard to testing of SRV and APR valves, testing at higher pressure is beneficial in that operation at low pressure results in higher mechanical loads being generated between seat and disc when these valves close. Accordingly, reliability of these valves will improve and neither the probability nor the consequences of accidents for which these valves are assumed to function will increase.

Elimination of the "valve position indication" for verification of APR valve actuation would still provide two valid means of APR valve operability determination (torus level instrumentation and audible discharge). Accordingly, for accidents where APR valves are required to be operable, neither the probability nor consequences of these accidents will increase as a result of the proposed TS change.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

With regard to the shutdown margin demonstration and withdrawal/decoupling of control rods, since the proposed changes to the TS assures that shutdown margins will be maintained, no new or different types of accidents will be created.

Since the change to the system description in TS 3.4 is an administrative change, no new or different types of accidents will be created.

With regard to the increase in SRV/APR valve test pressure and the elimination of "valve position indication" for APR valve operability verification, since operability of the subject equipment is maintained by the proposed TS changes, no new or different type of accident will be created.

• Involve a significant reduction in a margin of safety.

Since operability of equipment and shutdown margins are maintained, and no new or different types of accidents would be created as a result of the proposed TS changes, no safety margins would be reduced.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Units Nos. 1 and 2, Goodhue County, Minnesota

Date of amendment request: January 30, 1991

Description of amendment request: The proposed amendment would revise the Technical Specifications, Section 6.2.B.4, requirements for Operations Committee review of maintenance procedures with the requirements for preparation, review, and approval of maintenance procedures included in a new Section 6.2.C.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The fundamental safety issue in this change is whether there can be reasonable assurance that safety related maintenance procedures will be adequately reviewed by utilizing a review process involving knowledgeable individuals without requiring review by the Operations Committee. There are different methods to administratively control the preparation, review, and approval of safety related procedures.

In fact, procedure control is mandated by 10 CFR Part 50 Appendix B- Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants and addressed by various Regulatory Guides without a specific method of procedure control being prescribed. Specific methods are not prescribed because many effective methods are available.

The proposed change includes a review process which can reasonably assure adequate review of safety related maintenance procedures. In addition, our quality assurance program, which meets the requirements of 10 CFR 50 Appendix B, has the elements to assure that our procedure review process will be evaluated for effectiveness. Since this change will not cause a decline in effectiveness of the reviews of safety related maintenance procedures, it will not affect the physical configuration of the plant or how it is operated. Therefore it will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment will not create the possibility or a new or different kind of accident from any accident previously analyzed.

As stated above, the proposed change will not cause a decline in effectiveness of the reviews of safety related maintenance procedures and, thus, it will not affect the physical configuration of the plant or how it is operated. Therefore it will not create the possibility of a new or different kind of accident from any accident previously analyzed.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

As stated above, the proposed change will not cause a decline in effectiveness of the reviews of safety related maintenance procedures and, thus, will not affect the physical configuration of the plant or how it is operated. Therefore, it will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Project Director: L. B. Marsh.

Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota

Date of amendment request: February 26, 1991.

Description of amendment request: The proposed amendment would revise the Prairie Island Nuclear Generating Plant Technical Specifications (TS) Section 3.4.A to incorporate an action statement for the inoperability of one steam generator power operated relief valve. The action statement was unintentionally deleted from Section 3.4 during a previous TS revision.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment incorporates an action statement into Technical Specification 3.4 that is similar to the action statement previously included in Section 3.4 for the steam generator power operated relief valves. However, the proposed action statement is more restrictive than the action statement that was inadvertently deleted. The allowed out of service time is the same as the previous action statement, but the proposed action statement only allows one stream generator power operated relief valve to be out of service for the 48 hour period. The previous action statement implied that both steam generator power operated relief valves could be inoperable for 48 hours.

Therefore, because the proposed action statement is more restrictive than the action statement previously included in the Technical Specifications, the proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

There are no new failure modes or mechanisms associated with the proposed changes. The proposed changes do not involve any modification in the operational limits or physical design of the involved systems. The change merely incorporates an action statement for the steam generator power operated relief valves which is more restrictive than an action statement that was

previously included in the Prairie Island Technical Specifications.

As discussed above, the proposed changes do not result in any significant change in the configuration of the plant, equipment design or equipment use nor do they require any change in the accident analysis methodology. Therefore, no different type of accident is created. No safety analyses are affected. The accident analyses presented in the Updated Safety Analysis Report remain bounding.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

The proposed changes do not involve a reduction in any Technical Specification margin of safety. The change is incorporating an action statement for the steam generator power operated relief valves which is more restrictive than an action statement that was previously included in the Prairie Island Technical Specifications. Therefore, the proposed changes will not result in any reduction in the plant's margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Project Director: L. B. Marsh.

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment request: November 15, 1990 (Reference LAR 90-11)

Description of amendment request: The proposed amendment would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant Unit Nos. 1 and 2 to (a) revise and relocate the Fire Protection License Conditions, relocate the Fire Protection TS and associated Bases, and augment the Administrative TS to define the Fire Protection Program controls, and (b) revise the Condensate Storage Tank TS and associated Bases to clarify the requirement for water sources used by the Auxiliary Feedwater System.

The licensee has provided the following description and explanation of the proposed changes to the fire protection TS:

The first part of license amendment request (LAR) 90-11 proposes to revise the Fire Protection license conditions and TS in accordance with the recommendations of Generic Letters 86-10 and 88-12. As required by the Generic Letters, operational conditions, remedial actions, and test requirements associated with relocated TS will be included in the Final Safety Analysis Report (FSAR) update.

The proposed changes to the Fire Protection License Conditions are as follows:

1. License Conditions 2.C.(5) for Unit 1 and 2.C.(4) for Unit 2, would be revised to be consistent with the standard license condition proposed in Generic Letter 86-10. The Fire Protection license conditions would also be relocated to exempt them from the 24 hour reporting requirement in License Condition 2.G. Notifications and written follow-up would still be made in accordance with the provisions of 10 CFR 50.72 and 10 CFR 50.73.

The proposed changes to the [Fire Protection] TS are as follows:

1. The requirements of TS 3/4.3.3.8 (Fire Detection Instrumentation), 3/4.7.9.1 (Fire Suppression Water System), 3/4.7.9.2 (Spray and/or Sprinkler Systems), 3/4.7.9.3 (CO2 System), 3/4.7.9.4 (Halon System), 3/4.7.9.5 (Fire Hose Stations), and 3/4.7.10 (Fire Barrier Penetrations) would be relocated to plant administrative procedure controls and to the FSAR Update.

2. The requirements of TS 6.2.2.e (Plant Staff Fire Brigade Composition) are currently in the FSAR Update and also would be relocated to plant procedures.

3. TS 6.5.2.6 and 6.5.2.7 (Plant Safety Review Committee (PSRC) Responsibilities) would be revised to require PSRC review of the plant Fire Protection Program and its revisions and recommend approval to the Plant Manager.

4. TS 6.8.1 (Written Procedure Requirements) would be revised to include the Fire Protection Program implementation.

The changes proposed in the first part of LAR 90-11 are consistent with the recommendations of Generic Letters 86-10 and 88-12. As indicated in the Generic Letters, incorporating the standard license condition will (a) reduce problems for PG&E and NRC inspectors in identifying the operative and enforceable fire protection requirements, and (b) allow PG&E to make changes to the approved Diablo Canyon Fire Protection Program without prior Commission approval if the changes do not adversely affect the ability to achieve and maintain safe shutdown in the event of a fire. Removal of the fire protection requirements from the TS and relocation to the FSAR Update will further the Commission's goal of TS improvements, as delineated in NRC policy statements, without reducing the level of fire safety. Finally, augmentation of the TS Administrative Controls will ensure that control of the Fire Protection Program is equivalent to other programs implemented by license conditions, such as the Emergency Plan and Security Plan.

The licensee has provided the following description and explanation of the proposed changes to the Condensate Storage Tank TS:

[The second] part of LAR 90-11 proposes to revise TS 3/4.7.1.3 "Condensate Storage Tank," and associated Bases to clarify the requirement for water sources used by the Auxiliary Feedwater System. Specific TS changes include:

1. The title of TS 3/4.7.1.3 would be changed from "Condensate Storage Tank" to "Auxiliary Feedwater Source."

2. The Limiting Conditions for Operation (LCOs) would be changed to state a requirement to maintain a usable volume of water in the Condensate Storage Tank (CST) of 164,678 gallons and a usable volume of water in the Fire Water Storage Tank (FWST) of 57,922 gallons for one unit in operation and 115,844 gallons for two units in operation. The LCOs would also be changed to require that an open flow path to the Auxiliary Feedwater (AFW) pumps be maintained from the CST and a flow path to the AFW pumps be maintained capable of being aligned to the FWST.

3. The Action Statements would be changed to provide the Action Statement for the CST and the FWST in agreement with the LCO requirements of volume and flow path.

4. The CST and FWST Surveillance Requirements would be changed to agree with the LCO requirements on volume and flow path.

5. Additional information would be added to the Bases that explains the basis for the LCO, Action Statement, and Surveillance Requirements.

The proposed revision does not alter previous water volume commitments or the operation of the AFW system. Representing the LCO requirements in terms of tank volume and flow path, instead of tank operability, more clearly defines the requirements needed to meet the bases of the TS. The LCO requirements are more easily understood, which should enhance plant operation and the implementation of the TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

[Fire Protection Changes]

License Conditions 2.C.(5) and 2.C.(4):

As before, changes to the Fire Protection Program that decrease the level of plant safety would only be made with prior Commission approval. The provisions of 10 CFR 50.59 will be used to evaluate proposed changes. 10 CFR 50.59 contains requirements that an auditable record be maintained of all changes made to the Fire Protection Program that do not require prior Commission approval and requires an annual report to the Commission which summarizes these changes. Exemption from the 24 hour reporting requirement is an administrative change.

The proposed change in License Conditions would not result in any loss of control of the change process.

TS 3/4.3.3.8, 3/4.7.9.1 through 3/4.7.9.5, 3/4.7.10, and 6.2.2.e:

No changes to the fire protection requirements presently contained in the TS would be made. The proposed changes would relocate TS 3/4.3.3.8 (Fire Detection Instrumentation), 3/4.7.9.1 (Fire Suppression Water System), 3/4.7.9.2 (Spray and/or Sprinkler Systems), 3/4.7.9.3 (CO_2 System), 3/4.7.9.4 (Halon Systems), 3/4.7.9.5 (Fire Hose Stations), 3/4.7.10 (Fire Barrier Penetrations), and 6.2.2.e (Fire Brigade Staffing) and incorporate them into plant administrative procedures and controls and the FSAR Update without altering them. As such, the changes are administrative in nature. The PSRC has always been responsible for reviewing proposed changes to the TS and applicable procedures and is now responsible for reviewing changes to the Fire Protection Program, which contains the former TS and other requirements.

In accordance with Generic Letter 86-10, the provisions of 10 CFR 50.59 would be used to evaluate any changes PG&E desires to make in the Fire Protection Program.

TS 6.5.2.6, 6.5.2.7, and 6.8.1:

The proposed changes for TS 6.5.2.6 and 6.5.2.7 (PSRC Responsibilities) and 6.8.1 (Written Procedure Requirements) would not involve a reduction in requirements. The PSRC has always been responsible for reviewing proposed changes to the TS and applicable procedures and is now responsible for reviewing changes to the Fire Protection Program, which contains the former TS and other requirements.

The addition of the Fire Protection Program to the list of required written procedures constitutes an additional administrative control that supports relocation and control of fire protection TS.

Therefore, the proposed [fire protection] changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

[Condensate Storage Tank Changes]

The CST and FWST water sources are designated to provide a qualified supply of water for the AFW system to provide feedwater to the steam generators for RCS [Reactor Coolant System] heat removal in the event of the loss of the normal feedwater supply. The proposed license amendment would provide a clearer LCO statement relating to the primary purpose of the CST and FWST water volumes and identifies water source LCO requirements for the FWST. The total volume of water in the sources is not altered from that previously identified as required for plant cooldown, and the function or the operation of the water sources or the AFW system is not altered. Consequently, accidents evaluated in the FSAR Update are not affected.

Therefore, the proposed [CST] changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

[Fire Protection Changes]

License Conditions 2.C.(5) and 2.C.(4):

The change in License Conditions 2.C.(5) for Unit 1 and 2.C.(4) for Unit 2 would not result in any loss of control of the change process. Exemption from the 24-hour reporting requirement is an administrative change.

TS 3/4.3.3.8, 3/4.7.9.1 through 3/4.7.9.5, 3/4.7.10, and 6.2.2.e:

The proposed changes would relocate the TS to the FSAR Update and are, therefore, administrative in nature. Plant procedures will establish, implement, and maintain the specific instructions for implementing the LCO, actions, and surveillance requirements. There would be no reduction in Fire Protection Program requirements.

In accordance with Generic Letter 86-10, the provisions of 10 CFR 50.59 would be used to evaluate any changes PG&E desires to make in the Fire Protection Program.

TS 6.5.2.6, 6.5.2.7, and 6.8.1:

There would be no reduction in requirements as a result of the revisions to TS 6.5.2.6, 6.5.2.7, and 6.8.1. The proposed changes are administrative in nature. The inclusion of these TS are additions to the previously identified PSRC responsibilities in that previously the PSRC did not have a specific TS requirement to review and approve changes to the Fire Protection Program.

Therefore, the proposed [fire protection] changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

[Condensate Storage Tank Changes]

There is no physical alteration to the water source or the AFW system, nor is there a change in the method by which the AFW system performs its functions.

Therefore, the proposed [CST] changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does the change involve a significant reduction in a margin of safety?

[Fire Protection Changes]

License Conditions 2.C.(5) and 2.C.(4):

The proposed License Conditions 2.C.(5) for Unit 1 and 2.C.(4) for Unit 2 would not involve any significant change in requirements and were recommended by the NRC in Generic Letter 86-10. Exemption from the 24-hour reporting requirement is an administrative change.

TS 3/4.3.3.8, 3/4.7.9.1 through 3/4.7.9.5, 3/4.7.10, and 6.2.2.e:

The proposed changes would relocate the TS to the FSAR Update, and therefore, are administrative in nature. Plant procedures will establish, implement, and maintain the specific instructions necessary for implementing the LCO, action, and surveillance requirements, just as with the requirements in the TS. Any proposed reduction in requirements would require a 10 CFR 50.59 safety evaluation, which considers a reduction of safety margin.

TS 6.5.2.6, 6.5.2.7, and 6.8.1:

The change in responsibilities as delineated in TS 6.5.2.6 and 6.5.2.7 would involve an increase in requirements. The PSRC would be responsible for reviewing the entire Fire Protection Program, whereas formerly the PSRC responsibilities for review in this area included only the TS. Their responsibility for procedural review remains unchanged.

The addition of the Fire Protection Program to the list of required written procedures listed in TS 6.8.1 constitutes an additional control not presently included in the TS.

Therefore, the proposed [fire protection] changes do not involve a significant reduction in a margin of safety.

[Condensate Storage Tank Changes]

The proposed changes would more clearly identify the water source requirements; however, they do not alter the purposes or quantities of the water. The clarification enhances understanding and compliance with the requirements to maintain an available water source.

Therefore, the proposed [CST] changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Attorney for licensee: Richard F. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120

NRC Project Director: James E. Dyer

Portland General Electric Company, et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: March 21, 1990

Description of amendment request: The proposed amendment, would remove the billet-specific listing of Plant Review Board (PRB) membership and replace it with a discipline-specific representation. This amendment would thus allow for future changes to the PRB billet titles without the requirement for processing an expeditious change to the Trojan Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

The proposed change would not involve a significant increase in the probability or consequences of an accident previously evaluated because replacement of the billet-specific Plant

Review Board composition with requirements for a discipline-specific composition does not affect any current accident analyses or operational characteristic and therefore can have no effect on the probability or consequences of an accident.

The proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change only redefines the composition of the Plant Review Board, making it discipline-specific instead of billet-specific, which does not create any new accident scenarios and therefore does not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed change would not involve a significant reduction in a margin of safety because changing the definition of Plant Review Board composition from billet-specific to discipline-specific is simply an administrative action that does not relate to safety margins.

Based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Branford Price Millar Library, Portland State University, 934 S.W. Harrison Street, P.O. Box 1151, Portland, Oregon 97207

Attorney for licensees: Leonard A. Girard, Esq., Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204

NRR Project Director: James E. Dyer

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Units 1 and 2, Salem County, New Jersey

Date of amendment request: February 13, 1991

Description of amendment request: The proposed amendment revises Salem Units 1 and 2 Technical Specification 3.6.2.3 to redefine the applicable ACTIONs to be taken on the basis of inoperable fan "units" as opposed to inoperable "groups" of fan coolers. This change also redefines the ACTION requirements to be more consistent with the design basis containment cooling capability of the Containment Spray and Containment Cooling Systems as described in Section 6.2 of the Salem Updated Final Safety Analysis Report (UFSAR).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The changes proposed herein for the Salem Generating Station Unit Nos. 1 and 2 Technical Specification:

1. Do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to revise the technical specification of the containment fan cooling system configuration, from one based on units assigned to groups in accordance with emergency power train assignment to one based on components composing a safety train considering the swing capability of the service water configuration, does not change the systems design, its bases, or how the system will operate for satisfying the accidents analyzed in UFSAR Chapter 15. The basis for the limiting condition for operation will reflect the accident analysis and more accurately represent the design basis description and safety analysis contained in UFSAR Section 6.2 and Chapter 15. The 72 hour AOT [allowed outage time] will be consistent with the Technical Specification governing ECCS [emergency core cooling system] operability and correlate with the systems capability as described and analyzed in the UFSAR. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve any changes to emergency power source assignment or piping/valve arrangement, nor does it involve any design changes, new configurations, revisions to single failure/safety analysis assumptions or basis and conclusions of the existing accident analysis. Therefore, the proposed change does not introduce the possibility for any new or different kind of accident.

3. Does not involve a significant reduction in a margin of safety.

The change in the AOT will more accurately reflect the actual system capabilities as described and analyzed in the UFSAR and will be consistent with correlating specifications governing ECCS operability. The proposed change does not involve a significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Bishop, Cook, Purcell and Reynolds, 1400 L Street, NW., Washington, D.C., 20005-3502

NRC Project Director: Walter R. Butler

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of amendment request: March 1, 1991 (TS 294)

Description of amendment request: Section 6.0, "Administrative controls" of the Browns Ferry Nuclear (BFN) Plant, Units 1, 2 and 3 Technical Specifications would be amended to administratively align the titles of the Plant Operations Review Committee (PORC) membership and other miscellaneous titles with current BFN Site organization titles. The designated chairman, alternate chairman, and PORC members titles are changed to reflect those of the current organization chart.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed technical specification changes to BFN Section 6 PORC members do not involve a significant increase in the probability or consequence of any accident previously evaluated. The proposed changes are administrative in nature and do not involve any modifications to safety-related equipment currently installed in the plant. The subject changes do not prevent or alter the operation of any equipment required to mitigate any accident for which BFN is licensed. These changes do not involve any physical modification to the design or operation of the plant, therefore, they do not invalidate the assumptions made in the Final Safety Analysis Report (FSAR) or safety limits currently identified the TSs. For these reasons, the proposed changes do not affect the probability or consequences of any accident previously analyzed.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes are purely administrative in nature and do not modify or alter the configuration of the plant. These changes do not create any new accident mode or release pathway of radioactive effluents to the environment.

3. The proposed amendment does not involve a significant reduction in a margin of safety. The proposed changes do not remove or diminish any elements of the nuclear organization or practices that are essential to the safe operation of BFN. They do not involve any changes to plant operating systems or associated safety analyses. The changes enhance the overall clarity in BFN Section 6.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff

proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Project Director: Frederick J. Hebdon

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendments request: October 30, 1990

Description of amendments request: The licensee proposes amending Technical Specification 15.3.1.F. LIMITING CONDITIONS FOR OPERATION, REACTOR COOLANT SYSTEM, MINIMUM CONDITIONS FOR CRITICALITY, by adding a specification which requires that during approach to criticality, at least one count per second, attributable to neutrons, shall register on a narrow range source monitor. The corresponding basis section would be modified to include the basis for the new specification. The licensee also proposed amending Technical Specification 15.5.3.A.5, DESIGN FEATURES, REACTOR, by changing the description to say that neutron source may be used instead of saying that they are used.

Prior to reactor startup the reactor operator should verify that the source range neutron flux monitoring instrumentation is functioning. This verification helps ensure that the operator has the means to monitor the subcritical neutron multiplication during startup and approach to criticality. To verify that the instruments are functioning, a neutron source is necessary so that a minimum count rate is observable on the neutron flux monitor.

For the initial core loading, special source assemblies must be installed in the core to achieve the necessary instrumentation response. After fuel has been irradiated, neutrons emitted by fission product decay in the irradiated fuel may provide sufficient counts on the instrumentation. Wisconsin Electric Power Company believes that the neutron source assemblies are no longer needed at the Point Beach Nuclear Plant. Accordingly, the proposed amendment would make the inclusion of special neutron source assemblies optional at the Point Beach Nuclear Plant. To be certain that the intent of the source is still achieved, a requirement would be added that the source range monitoring instrumentation be indicating a neutron count rate of at least one count per second before a startup commences.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. In addition, the Commission has evaluated the proposed changes against the above standards as required by 10 CFR 50.91(a) and has concluded that:

(1) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because the change only allows the removal of neutron source assemblies no longer required but imposes a more specific requirement that the source range monitors must show a positive reading before startup. The inadvertent criticality accident analyzed in the FSAR is the only previously evaluated accident potentially affected by the neutron source range monitoring system. If removal of the source assemblies were to result in no flux, verification of the operability of the instrumentation would not be possible and the probability of the accident might increase. With the addition of the technical specification requirement that a minimum count rate be indicated before startup, replacing the less direct requirement that neutron source range assemblies be installed in the core, there may actually be a decrease in the probability that an inadvertent criticality could occur.

(2) The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated because the use of the neutron source assemblies is limited to providing the instrument check prior to startup. Attainment of this objective is ensured by adding the requirement that the instrumentation indication be present regardless whether neutron source assemblies are installed in the core. No other safety system or plant operating procedure is dependent on the presence of the neutron source assemblies.

(3) The proposed changes do not involve a significant reduction in a margin of safety because the objective of the existing technical specifications is not modified. Since the licensee has argued that the fission product decay produces enough neutron flux to provide an indication on startup range monitors, eliminating the neutron source assemblies will have no bearing on the capability to verify operability of those monitors. The amendment would incorporate a more specific requirement that the functioning of neutron monitoring instrumentation be ensured prior to startup. Whether the instrumentation is indicating neutrons resulting from fission product decay or from neutron source assemblies specially installed for this purpose has no effect on the functional verification. Therefore there is no reduction in the margin of safety.

Based on the above evaluation, the staff proposes to determine that these changes do not involve a significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon.

Previously Published Notices of Consideration of Issuance of Amendments to Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Entergy Operations, Inc., Docket No. 50-382, Waterford Steam Electric Station Unit 3, St. Charles Parish, Louisiana

Date of amendment request: January 24, 1991

Brief description of amendment request: The amendment revises the Technical Specifications by changing the surveillance requirements to accurately reflect the design characteristics of the installed shutdown cooling system suction line isolation valves.

Date of publication of individual notice in **Federal Register:** February 27, 1991 (56 FR 8221)

Expiration date of individual notice: Comment period expired March 14, 1991; Notice period expires March 29, 1991

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: February 6, 1991

Brief description of amendment request: The amendment would change the technical specifications to allow a moderator temperature coefficient (MTC) to be more negative than the current limit of -3.0x10 ^{4} delta k/k/° F. The future limits of the negative MTCs will be fuel cycle-specific and are permitted to appear in the Core Operating Limits Report as per the NRC Generic Letter 88-16. Specifically TS 3.1.1.3.c will be modified to read as follows: "The moderator temperature coefficient shall be equal to or less negative than the limit provided in the Core Operating Limits Report at rated thermal power." TS 6.9.17 will also be modified to reflect the revised content of the Core Operating Limits Report.

Date of individual notice in **Federal Register:** February 25, 1991 (56 FR 7734)

Expiration date of individual notice: March 27, 1991

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Notice of Issuance of Amendment to Facility Operating License

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Projects.

Alabama Power Company, Docket No. 50-348, Joseph M. Farley Nuclear Plant, Unit 1, Houston County, Alabama.

Date of application for amendment: October 26, 1990, as supplemented January 14 and 31, and February 15, 1991.

Brief description of amendment: The amendment changes the Technical Specifications to eliminate the resistance temperature detector bypass system and to allow an average of 15 percent steam generator tube plugging with a peak of 20 percent in any one steam generator. The amendment also includes an approximate 1.5 percent reduction in the reactor coolant system thermal design flow.

Date of issuance: March 8, 1991

Effective date: March 8, 1991

Amendment No.: 87

Facility Operating License No. NPF-2. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** December 26, 1990 (55 FR 53067) The submittals dated January 14 and 31, and February 15, 1991, provided revised analyses to incorporate additional penalties and uncertainties and minor revisions to Technical Specification pages. These supplemental submittals did not substantially alter the action noticed or change the NRC staff's proposed initial determination of no significant hazards consideration as published in the **Federal Register.** The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 8, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, P. O. Box 1369, Dothan, Alabama 36302

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: March 15, 1990

Brief description of amendment: The amendment changes the surveillance requirements for redundant core and containment cooling systems and the allowed out-of-service period for the containment cooling system and low pressure coolant injection pumps. The NRC staff denied removal of the requirement for immediate and daily testing of the operable diesel generator when the redundant diesel generator is inoperable.

Date of issuance: March 4, 1991

Effective date: March 4, 1991

Amendment No.: 135

Facility Operating License No. DPR-35: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 2, 1990 (55 FR 18408) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 4, 1991.

No significant hazards consideration comments received: Yes - Mr. Joseph Kriesberg, Director, Massachusetts Citizens for Safe Energy, Boston, Massachusetts responded to the Federal Register Notice in the form of 10 questions on the surveillance requirement for Emergency Core Cooling Systems (ECCS) redundant systems surveillance generated by limiting conditions of operations. NRC responded to this inquiry by letter, dated August 9, 1990, in question and answer format. No additional correspondence has been received.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: June 29, 1990

Brief description of amendment: The amendment revises the Technical Specifications by removing the surveillance requirements related to the turbine overspeed trip system.

Date of issuance: March 4, 1991.

Effective date: March 4, 1991.

Amendment No. 133

Facility Operating License No. DPR-23. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** July 25, 1990 (55 FR 30293) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 4, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: November 16, 1990, as supplemented December 21, 1990.

Brief description of amendment: The amendment revises the Technical Specifications to delete the surveillance requirements to verify operability of the autoclosure interlock for the residual heat removal system suction/isolation valves on high reactor coolant system pressure.

Date of issuance: March 4, 1991

Effective date: March 4, 1991

Amendment No. 24

Facility Operating License No. NPF-63. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** December 26, 1990 (55 FR 53068) The December 21, 1990, submittal provided updated Technical Specification pages and did not change the initial determination of no significant hazards consideration published in the FEDERAL REGISTER. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 4, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Commonwealth Edison Company, Docket No. 50-254, Quad Cities Nuclear Power Station, Unit 1, Rock Island County, Illinois

Date of application for amendment: December 18, 1990, as supplemented February 4 and 13, 1991

Brief description of amendments: Revison of Technical Specifications to reflect a modification to the fast acting solenoid valves which initiate rapid closure of the turbine control valves. The new design uses a pressure switch, rather than a limit switch, to initiate a reactor scram.

Date of issuance: February 21, 1991

Effective date: February 21, 1991

Amendment No.: 129

Facility Operating License No. DPR-29. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 31, 1990 (55 FR 53596) The February 4 and 13, 1991, submittals provided additional clarifying information that did not change the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 21, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

NRC Project Director: Richard J. Barrett

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: December 19, 1990

Brief description of amendments: The amendments modify TS 4.4.5 and its associated Bases to allow the option of using the B&W Kinetic Sleeving Process for steam generator tube repairs as described in Topical Report BAW-2045(P)-A. This will provide an alternative other than plugging for handling defective steam generator tubes.

Date of issuance: March 4, 1991

Effective date: March 4, 1991

Amendment Nos.: 84 and 78

Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 18, 1991 (56 FR 2053) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 4, 1991 No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: December 19, 1990 as supplemented February 15, 1991

Brief description of amendments: The amendments reduce from 75% to 50% the number of moveable incore detector thimbles required for the Moveable Incore Detection System to be operable, thus allowing continued operation of Unit 1 should the current problem with sticking detector thimbles become worse. The amendments are applicable to Unit 1, Cycle 7 only.

Date of issuance: February 27, 1991

Effective date: February 27, 1991

Amendment Nos.: 117 and 99

Facility Operating License Nos. NPF-9 and NPF-17: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 25, 1991 (56 FR 2957) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 27, 1991

No significant hazards consideration comments received: No.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Entergy Operations, Inc., Docket Nos. 50-313 and 50-368, Arkansas Nuclear One, Unit Nos. 1 and 2, Pope County, Arkansas

Date of amendment request: December 11, 1990

Brief description of amendments: The amendments revise the Arkansas Nuclear One, Units 1 and 2 (ANO-1&2) Technical Specifications (TS) to delete the Administrative Controls Section regarding Environmental Qualification. Specifically, ANO-1 TS 6.9 and 6.13 and ANO-2 TS 6.10 and 6.12 are revised to remove an unnecessary specification which has been superseded by another regulatory requirement.

Date of issuance: February 28, 1991.

Effective date: 30 days from the date of issuance.

Amendment Nos.: 144 and 116

Facility Operating License Nos. DPR-51 and NPF-6. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 23, 1991 (56 FR 2548) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 28, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of application for amendments: August 27, 1990, as modified September 27, 1990 and supplemented January 2, 1991.

Brief description of amendments: These amendments revise Section 6.0, Administrative Controls, by changing organizational titles and correcting a typographical error.

Date of Issuance: March 6, 1991

Effective Date: March 6, 1991

Amendment Nos.: 107 & 47

Facility Operating License Nos. DPR-67 and NPF-16: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 17, 1990 (55 FR 42096) The January 2, 1991 letter provided supplemental information which did not alter the staff's initial determination of no significant hazards consideration.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 6, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of application for amendments: November 17, 1989

Brief description of amendments: These amendments make administrative changes to the St. Lucie Unit 1 and Unit 2 Technical Specifications and achieve consistency throughout the Technical Specifications by removing outdated material, making minor text changes, correcting errors and implementing the line-item improvements recommended by Generic Letter 89-14, "Removal of the 3.25 Limit on Extending Surveillance Intervals."

Date of Issuance: March 6, 1991

Effective Date: March 6, 1991

Amendment Nos.: 108 & 48

Facility Operating License Nos. DPR-67 and NPF-16: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 27, 1989 (54 FR 53265) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 6, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: July 10, 1990

Brief description of amendment: The amendment revises the Technical Specification (TS) to reduce the low condenser vacuum reactor scram setpoint in TS Table 3.1.1 from 23 inches Hg vacuum reactor to 20 inches Hg vacuum and revises the bases to support the new setpoint. Please correct the FSAR value of steam bypass block of 10 Hg vacuum to agree with the value in the TS of 7 inches Hg vacuum.

Date of Issuance: March 4, 1991

Effective date: March 4, 1991

Amendment No.: 149

Provisional Operating License No. DPR-16. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 22, 1990 (55 FR 34371) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated March 4, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: November 20, 1990

Brief description of amendment: Revises the setpoint for the degraded voltage trip relays.

Date of Issuance: February 25, 1991

Effective date: February 25, 1991

Amendment No.: 159

Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 23, 1991 (56 FR 2548) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated February 25, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: September 25, 1990

Brief description of amendment: Revises the criteria for reactor building purge valve replacement.

Date of issuance: March 5, 1991

Effective date: March 5, 1991

Amendment No.: 160

Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 14, 1990 (55 FR 47571) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated March 5, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: September 5, 1990

Brief description of amendments: The amendments remove the provision of Section 4.0.2 that limits the combined time interval for three consecutive surveillances to less than 3.25 times the specified interval. Guidance on this proposed change to the Technical Specifications was provided to all reactor licensees and applicants by Generic Letter 89-14, dated August 21, 1989.

Date of issuance: March 4, 1991

Effective date: March 4, 1991

Amendment Nos.: Amendment No. 21 and Amendment No. 11

Facility Operating License Nos. NPF-76 and NPF-80. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 28, 1990 (55 FR 49451) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 4, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of application for amendment: January 18, 1991

Description of amendment request: The amendment revised Technical Specification section 3.6.1.2 to allow exclusion of the leakage rates associated with two feedwater system containment isolation check valves from the Local Leak Rate Testing totals in accordance with the Temporary Exemption to Appendix J of 10 CFR Part 50 issued to the licensee on February 20, 1991.

Date of issuance: February 22, 1991

Effective date: February 22, 1991

Amendment No.: 57

Facility Operating License No. NPF-62. The amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes (56 FR 2960, January 25, 1991). That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by February 25, 1991, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment. The Commission's related evaluated is contained in a Safety Evaluation dated February 22, 1991.

Attorney for licensee: Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: December 8, 1989

Brief description of amendment: The amendment revised the Technical Specifications to:

1. Increase the surveillance interval from once per year to once per 18 months for the surveillance that are normally carried out during refueling outages,

2. Reduce the face velocity inlet condition for the Laboratory Carbon Sample Analysis Test to greater than or equal to 27 FPM, and

3. Other minor editorial changes that provide clarification to the wording of the existing specifications.

Date of issuance: February 25, 1991.

Effective date: February 25, 1991.

Amendment No.: 136

Facility Operating License No. DPR-46. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 7, 1990 (55 FR 4273) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 25, 1991. No siginificant hazards consideration comments received: No.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: May 31, 1989

Brief description of amendment: The amendment revised the Technical Specifications to delete the 20 second minimum stroke time requirement for the Reactor Recirculation Pump Discharge Valves.

Date of issuance: March 7, 1991

Effective date: March 7, 1991

Amendment No.: 137

Facility Operating License No. DPR-46. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 28, 1989, (54 FR 27231) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 7, 1991

No siginificant hazards consideration comments received: No.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: August 9, 1990, as supplemented January 10, 1991.

Brief description of amendment: The amendment changes the Millstone Unit 3 Technical Specifications (TS) based on the recommendations provided by the staff in Generic Letter (GL) 87-09 related to the applicability of limiting conditions for operation and the surveillance requirements of the (TS) 3.0 and 4.0.

Date of issuance: February 26, 1991

Effective date: February 26, 1991

Amendment No.: 151

Facility Operating License No. DPR-65. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 3, 1990 (55 FR 40470) The January 10, 1991 submittal provided additional clarifying information and did not change the initial no significant hazards considerations determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 26, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: December 13, 1990

Brief description of amendment: Revises the Appendix A Technical Specifications to eliminate redundant testing requirements and nmake ECCS pump and valve testing requirements consistent with ASME Section XI code requirements.

Date of issuance: February 15, 1991

Effective date: February 15, 1991

Amendment No.: 77

Facility Operating License No. DPR-22. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 9, 1991 (55 FR 894) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 15, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: December 19, 1990

Brief description of amendment: The amendment changed the Fort Calhoun Station's Technical Specifications to allow operation of the Radioactive Waste Processing Building.

Date of issuance: March 7, 1991

Effective date: March 7, 1991

Amendment No.: 137

Facility Operating License No. DPR-40. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 23, 1991 (56 FR 2551) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 7, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: September 11, 1990 (Reference LAR 90-08)

Brief description of amendments: The amendments revised the combined Technical Specifications (TS) for the Diablo Canyon Power Plant (DCPP) Unit Nos. 1 and 2 to incorporate changes to management titles, clarify the roles of Shift Supervisor and Shift Foreman, provide additional flexibility for the Shift Technical Advisor (STA) position, and correct an erroneous value of the minimum contained borated water volume of the Refueling Water Storage Tank (RWST).

Date of issuance: March 6, 1991

Effective date: March 6, 1991

Amendment Nos.: 59 and 58

Facility Operating License Nos. DPR-80 and DPR-82: Amendments changed the Technical Specifications.

Date of initial notice in **Federal Register:** November 14, 1990 (55 FR 47575) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 6, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Portland General Electric Company, et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: April 22, 1990

Brief description of amendment: This amendment specifies that the provisions of Technical Specification (TS) 3.0.4 do not apply to the action statement of TS 3.7.6.1,regarding the operability requirements for two independent control room emergency ventilation systems.

Date of issuance: February 27, 1991

Effective date: February 27, 1991

Amendment No.: 169

Facility Operating License No. NPF-1: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 9, 1991 (56 FR 896) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 27, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Branford Price Millar Library, Portland State University, 934 S.W. Harrison Street, P.O. Box 1151, Portland, Oregon 97207

Public Service Company of Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station, Platteville, Colorado

Date of amendment request: April 26, 1990 as supplemented August 3, 1990.

Brief description of amendment: This amendment deletes requirements for shutdown margin assessments and allows the use of neutron sources near startup channel detectors when nine or less fueled regions remain in the core.

Date of issuance: February 14, 1991

Effective date: February 14, 1991

Amendment No.: 80

Facility License No. DPR-34. Amendment revised the license.

Date of initial notice in **Federal Register:** May 30, 1990 (55 FR 21977) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 14, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Greeley Public Library, City Complex Building, Greely, Colorado 80631

Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: October 12, 1990

Brief description of amendment: Revised Technical Specifications to eliminate the steam flow/feed flow mismatch reactor trip.

Date of issuance: February 28, 1991

Effective date: February 28, 1991

Amendment No.: 41

Facility Operating License No. DPR-18: Amendment revised Appendix A Technical Specifications of Facility Operating License DPR-18.

Date of initial notice in **Federal Register:** November 28, 1990 (55 FR 49455) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 28, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: July 28, 1990, as supplemented November 26, 1990

Brief description of amendment: The amendment changes the composition of the Plant Safety Review Committee (PSRC) in Technical Specification Section 6.5.1. The specific titles of the members of the PSRC will be deleted and replaced with a generic statement as to their number, seniority, and background. In addition, the proposed amendment redefines a QUORUM as being the PSRC Chairman and a majority of the PSRC members. Finally, the amendment ensures that designated alternates compose a voting minority of the PSRC.

Date of issuance: February 26, 1991.

Effective date: February 26, 1991.

Amendment No.: 95

Facility Operating License No. NPF-12. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** December 26, 1990 (55 FR 53075) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 26, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of application for amendment: September 28, 1990, with supplements dated January 14, 30, and 31, 1991.

Brief description of amendment: The amendment incorporates Technical Specification changes that reflect modifications to the Safeguards Load Sequencer System. The modifications were performed during refueling outage 11 to reduce single failure susceptibility of the Emergency Core Cooling System. A license condition that requires

modifications to the vital bus power sources by refueling outage 12 is included with the amendment.

Date of issuance: February 28, 1991

Effective date: February 28, 1991

Amendment No.: 143

Provisional Operating License No. DPR-13: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 17, 1990 (55 FR 42100) Supplementary information submitted by the licensee on January 14, 30, and 31, 1991, provided clarifications and additional details to the original submittal dated September 28, 1990. The information provided by the supplementary submittals was within the scope of the previous **Federal Register** Notice dated October 17, 1990 and did not alter the determination stated therein.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 28, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713

Tennessee Valley Authority, Docket No. 50-260, Browns Ferry Nuclear Plant, Unit 2, Limestone County, Alabama

Date of application for amendment: April 14, 1989 as supplemented April 14, 1989, January 30, 1990, and December 11, 1990 (TS 268)

Brief description of amendment: Amendment allows Browns Ferry Unit 2 to implement an Appendix R Safe Shutdown Program in accordance with guidance in Generic Letter 86-10.

Date of issuance: March 6, 1991

Effective date: March 6, 1991 and shall be implemented within 60 days but no later than restart of Unit 2.

Amendment No.: 192

Facility Operating License No. DPR-52: Amendment revised the license and Technical Specifications.

Date of initial notice in **Federal Register:** July 12, 1989 (54 FR 29413) and renoticed January 15, 1991 (56 FR 1545)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 6, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: July 20, 1991

Brief description of amendment: The amendment revises the surveillance testing requirements of certain engineered safeguards equipment in the Technical Specifications. An obsolete Technical Specification was deleted.

Date of issuance: March 4, 1991

Effective date: March 4, 1991

Amendment No.: 128

Facility Operating License No. DPR-28. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 5, 1990 (55 FR 36357). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 4, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: January 28, 1991

Brief description of amendment: The amendment deleted Technical Specification 5.3.a.6 to allow for receipt of new neutron flux detectors at the Kewaunee Nuclear Power Plant.

Date of issuance: March 4, 1991

Effective date: March 4, 1991

Amendment No.: 90

Facility Operating License No. DPR-43. Amendment revised the Technical Specifications. Public comments requested as to no significant hazards consideration: Yes (56 FR 4653, February 5, 1991). The notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by March 7, 1991, but indicated that if the Commission makes a final no significant hazards consideration determination, any such hearing would take place after issuance of the amendment. The Commission's related evaluation of the amendment and final no significant hazards consideration determination is contained in a Safety Evaluated dated March 4, 1991.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Attorney for licensee: Davis Baker, Esq., Foley and Lardner, P. O. Box 2193, Orlando, Florida 31082.

NRC Project Director: John N. Hannon

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: September 17, 1990

Brief description of amendment: The amendment deleted license condition 2.C(3) and replaced it with the standard fire protection license condition statement as shown in Generic Letter 86-10. The amendment also deleted TS sections 3.15 and 4.15 regarding fire protection limiting conditions for operation and surveillance requirements and relocated them to the KNPP Fire Plan. Also, the amendment relocated other fire protection requirements to the Fire Plan and deleted the associated TS.

Date of issuance: March 4, 1991

Effective date: March 4, 1991

Amendment No.: 91

Facility Operating License No. DPR-43. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 14, 1990 (55 FR 47580) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 4, 1991. No significant hazards consideration comments received: No.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: July 5, 1990

Brief description of amendment: The amendment revised TS 5.3.a.3 to increase the allowable fuel enrichment at the Kewaunee Nuclear Power Plant from 38.5 grams of U-235 per axial centimeter of fuel assembly (or 3.67 weight percent) to 49.2 grams per axial centimeter (or 4.75 as-built weight percent).

Date of issuance: March 7, 1991

Effective date: March 7, 1991

Amendment No.: 92

Facility Operating License No. DPR-43. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 22, 1990 (55 FR 34385) The Commission's related evaluation of

the amendment is contained in a Safety Evaluation dated March 7, 1991 and the Environmental Assessment dated February 28, 1991 (56 FR 9371). No significant hazards consideration comments received: No.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Notice of Issuance of Amendment to Facility Operating License and Final Determination of No Significant Hazards Consideration and Opportunity for Hearing (Exigent or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By April 19, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C. 20555 and at the Local Public Document Room for the particular facility involved.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the

bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to **(Project Director)**: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: February 28, 1991

Brief description of amendments: The amendments revise Technical Specifications (TS) Table 3.3-6, Item 3, (Action 31) to permit operation of the control room area ventilation system (CRAVS) with only 1 operable channel of air intake-radiation level monitoring instrumentation. TS 4.7.6.e(2) is also revised to reflect deletion of the automatic air intake isolation feature upon indication of the presence of High Radiation-Air Intake or Smoke Density-High signals.

Date of issuance: March 6, 1991

Effective date: March 6, 1991

Amendment No.: 85 & 79

Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: No The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated March 6, 1991.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Dated at Rockville, Maryland, this 13th day of March 1991.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Acting Director, Division of Reactor Projects - III/IV/V Office of Nuclear Reactor Regulation.

[FR Doc. 91-6486 Filed 3-19-91; 8:45 am]

BILLING CODE 7590-01-D

[Docket Nos. STN 50-456, STN 50-457, STN 50-454 and STN 40-455]

Commonwealth Edison Co.; Withdrawal of Application for Amendments to Facility Operating Licenses

The United States Nuclear Regulatory Commission (the Commission) has received a request from Commonwealth Edison Company (CECo, the licensee) to withdraw CECo's application for proposed amendments to Facility Operating License Nos. NPF-72, NPF-77, NPF-37 and NPF-66, issued to be licensee for operation of Braidwood Station, Unit Nos. 1 and 2, and Byron Station, Unit Nos. 1 and 2, respectively, located in Will County and Ogle County, Illinois, respectively. Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing was published in the **Federal Register** on June 28, 1989 (54 FR 27223).

The proposed amendment would change the Technical Specifications to incorporate revised ventilation flowrates, revise heater dissipation rates, clarify a testing method, correct a typographical error and delete a footnote reference.

By letter dated December 5, 1990, the licensee withdrew the application for the proposed amendments. The Commission has considered the licensee's request and has determined that permission to withdraw the March 6, 1989, application for amendments should be granted.

For further details with respect to this action, see (1) The application for amendments dated March 6, 1989, and (2) the staff's letter dated March 11, 1991.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room located at: for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481; for Byron, the Byron Public Library, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010.

Dated at Rockville, Maryland, this 11th day of March, 1991.

For the Nuclear Regulatory Commission.

Robert M. Pulsifer,

Project Manager, Project Directorate III-2, Division of Reactor Projects-III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91-6586 Filed 3-19-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 04008989-ML ASLBP No. 91-638-01-ML]

Envirocare of Utah, Inc.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered.

Envirocare of Utah, Inc.

Byproduct Material Waste Disposal License

The Board is being established pursuant to a notice published by the Commission on January 25, 1991, in the **Federal Register** (56 FR 2959) entitled, "Notice of Receipt of Application for Byproduct Material Waste Disposal License." The proposed license would authorize Envirocare of Utah, Inc., to accept and dispose of uranium and thorium byproduct material (as defined in section 11e.(2) of the Atomic Energy Act, as amended) received from other persons, at a site near Clive, Utah.

The applicant proposes to dispose of high-volume, low-activity section 11e.(2) byproduct material received in bulk by rail and truck.

The material will be placed in earthen disposal cells in lifts and covered with earth and rock. The applicant proposes to conduct operations on a site where the applicant currently disposes of Naturally Occurring Radioactive Material (NORM) under license from the Utah Department of Health, Bureau of Radiation Control.

The Board is comprised of the following administrative judges:

John H Frye, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Richard F. Foster, P.O. Box 4263, Sunriver, Oregon 97707

Frederick J. Shon, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

All correspondence, documents and other materials shall be filed with the Judges in accordance with 10 CFR § 2.701.

Issued at Bethesda, Maryland, this 14th day of March, 1991.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 91-6592 Filed 3-19-91; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Issuance of Transmittal Memorandum Number 10, Amending OMB Circular Number A-76

AGENCY: Office of Management and Budget.

ACTION: Issuance of Transmittal Memorandum No. 10, amending OMB Circular No. A-76, "Performance of Commercial Activities."

SUMMARY: This notice contains Transmittal No. 10, dated February 28, 1991, to OMB Circular No. A-76, "Performance of Commercial Activities."

This Transmittal Memorandum updates the Federal pay raise assumptions and inflation factors used for computing the Government's in-house personnel and non-pay cost increases for Fiscal Years 1991 through 1996. The Federal pay raise assumptions and the non-pay category rates are contained in the President's Budget for Fiscal Year 1992. The factors contained in OMB Circular No. A-76, Transmittal Memorandum No. 9, dated February 12, 1990, are outdated.

The revision does not require any agency to (1) create or maintain a duplicate control/monitoring/reporting system or (2) adopt any additional controls, not presently in compliance with Federal Acquisition Regulations (FAR).

FOR FURTHER INFORMATION CONTACT: David Childs, Office of Management and Budget, (202) 395-5090.

Frank Hodsoll,

Executive Associate Director.

February 28, 1991.

Memorandum for Heads of Executive Departments and Agencies

From: Frank Hodsoll, Executive Associate Director.

Subject: Performace of Commercial Activities.

This Transmittal Memorandum updates the Federal pay raise assumptions and inflation factors used for computing the Government's in-house personnel and non-pay cost increases, as provided in the President's Budget for Fiscal Year 1992. The following factors should be applied per paragraph C of the Supplemental Cost Comparison Handbook, pages IV-6 and IV-7:

Federal pay raise assumptions effective date	Inflation factors military and civilian
January 1991	4.1
January 1992	4.2
January 1993	4.7
January 1994	4.3
January 1995	4.1
January 1996	4.0
Non-pay categories (supplies and equipment, etc.)	
FY 1991	4.4
FY 1992	4.1
FY 1993	3.7
FY 1994	3.6
FY 1995	3.5
FY 1996	3.4

The above personnel pay raise factors shall be applied *after* consideration is given to the Interim Geographic Adjustments provided by section 302 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509).

This revision is effective as follows: all changes in the Transmittal Memorandum are effective upon the date this memorandum is signed and shall apply to all cost comparisons in process where the Government's in-house cost estimate has not been revealed before this date.

[FR Doc. 91-6530 Filed 3-19-91; 8:45 am]

BILLING CODE 3110-01-M

Office of Federal Procurement Policy

Government-wide Small Business and Small Disadvantaged Business Goals for Procurement Contracts; Policy Letter

AGENCY: Office of Federal Procurement Policy, OMB.

ACTION: The Office of Management and Budget (OMB), Office of Federal Procurement Policy (OFPP) is promulgating a final policy letter that establishes Government-wide goals for small business and small disadvantaged business.

SUMMARY: This office of Federal Procurement Policy (OFPP) Policy Letter establishes two Government-wide goals for procurement contracts, one for contract awards to small business concerns and another for contract awards to small business concerns owned or controlled by socially and economically disadvantaged individuals. This Policy Letter also establishes additional reporting requirements to facilitate monitoring achievement of the Government-wide goals.

The policy is being published pursuant to the direction of the United States Congress to the President as expressed in sections 502 and 503 of the Business Opportunity Development Reform Act of

1988, Public Law No. 100–656. The authority to implement this policy was delegated by the President to the Director of the Office of Management and Budget (see delegation memorandum published in the **Federal Register** on July 3, 1990, 55 FR 27453–27455).

EFFECTIVE DATE: Thirty days from the date of publication.

ADDRESS AND INFORMATION CONTACT: Robert L. Neal, Jr., Deputy Associate Administrator, Office of Federal Procurement Policy, 725 17th Street NW., Washington, DC 20503. Telephone (202) 395–6810.

SUPPLEMENTARY INFORMATION:

A. Background

Currently, agencies, in consultation with the Small Business Administration (SBA), develop annual goals for the participation of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals (small disadvantaged businesses) in contracts awarded by Federal agencies. SBA monitors agency performance and reports such achievements to the President and Congress.

Section 502 of the "Business Opportunity Development Reform Act of 1988" Public Law 100–656 (the Act) modifes this process by requiring the establishment of two Government-wide goals for contract awards; one regarding awards to small business concerns and another regarding small disadvantaged business concerns. For small business concerns, the goal must be no less than 20 percent of the total value of all prime contract awards for each fiscal year. The goal for the small disadvantaged business concerns must be no less than five percent of all prime contract and subcontract awards for each fiscal year. Each agency shall have its own annual goal, which represents the estimated maximum practicable opportunity for small businesses to participate in the performance of contracts led by such agencies. The SBA and the Administrator for Federal Procurement Policy are required to ensure that the cumulative annual contract goals for all agencies meet or exceed the annual Government-wide contract goals established.

Section 503 of the Act requires SBA to report the agencies' actual achievement of these goals to the President for inclusion in his State of Small Business Report. This section also specifies procurement data elements that must be included in the report and, therefore, collected from the agencies.

B. Public Comments

OFPP published a proposed Policy Letter with a request for comment on August 30, 1990 (55 FR 35484). Eighteen public comments were received in response to that notice. Four specifically supported the proposed Policy Letter, while three expressed disagreement with the proposed policy.

Five commentors suggested the addition of clarifying language to paragraph 4, entitled "Policy", that would further explain the interpretation of the statutory language regarding the goal for small disadvantaged businesses. In addition, two commentors suggested the inclusion of an example of how an agency would determine its five percent goal for small disadvantaged businesses.

Two commentors supported applying the five percent goal separately to the prime contract and subcontract bases, resulting in two subgoals. Under this scenario, one subgoal would be established as five percent of total prime contracts awarded and another subgoal would be established as five percent of the total estimated subcontracts awarded by prime contractors. One commentor supported requiring a five percent goal that is applied to the total prime *and* subcontract bases. Five percent of the total prime contracts and prime contractors' subcontracts estimated to be awarded in a fiscal year would be used to determine the Government-wide small disadvantaged business goal. No preference for either method was expressed by two commentors.

We concur that clarification is necessary and have modified the Policy Letter to more fully explain how the five percent goal for small disadvantaged businesses should be determined.

Furthermore, we concur with the viewpoint that the five percent goal should be applied separately to the prime contract and subcontract bases. An example of how to determine such goals in provided. The establishment of two goals for small disadvantaged business participation under the Policy Letter provides increased opportunities for small disadvantaged business awards, which comports with the statutory intent of fostering increased opportunities for small and small disadvantanged business participation in government contracting.

Two comentors expressed opposition to the inclusion of small disadvantaged businesses as a subset of small businesses for the purposes of monitoring goal attainment. Small disadvantaged businesses are small businesses that are owned and controlled by persons who have been determined to be socially or economically disadvantaged. The award of contracts to small disadvantaged businesses does not eliminate the fact that these firms are small business. Not allowing agencies to take credit for such awards would adversely distort the agency's achievements in its small business program. We do not agree with this suggestion and, therefore, no revision has been made.

Several commentors opposed the collection of data regarding the number of subcontracts awarded to small disadvantaged and women-owned businesses. Several commentors also indicated that these data are not collected on the current Standard Forms (SF) 294 and 295. Since this is an explicit statutory requirement, the data must be collected. Modification of the SF 295 to collect the required data will be handled by the Federal Acquisition Regulation (FAR) Councils.

Two commentors opposed the establishment of subcontract goals that are based on the total value of the prime contracts. We do not agree with these comments and will continue the current practice of developing subcontract goals based on the total value of the prime contract awarded.

There also was a comment that requested clarification on whether goals are based on total contract values or funds obligated. As indicated above, subcontract goals are based on the estimated total value of the prime contracts awarded. Reports of agency achievements against such established goals, however, are based on obligations as reported on the Individual Contract Action Report (SF–279), and the Summary Contract Actions Report (SF–281) to the Federal Procurement Data Center. We do not believe that additional clarification is necessary since this process is explained in greater detail in the SBA's Guidelines on Goals Under Procurement Preference Programs.

Three commentors suggested elimination or modification of paragraph 5(g) of the Policy Letter which indicates other categories of information may be stipulated in SBA's Guidelines on Goals Under Procurement Preference Programs. Since the statute does not provide this authority, we agree that some limitation of this paragraph is

necessary and have revised it accordingly.

Allan V. Burman,

Administrator.

Policy Letter No. 91–1—To the Heads of Executive Departments and Establishments

Subject: Government-Wide Small Business and Small Disadvantaged Business Goals for Procurement Contracts.

1. Purpose. The purpose of this Policy Letter is to provide uniform policy guidance to Executive branch departments and agencies regarding the implementation of sections 502 and 503 of Public Law 100–656, the Business Opportunity Development Reform Act of 1988. Section 502 amends section 15(g) of the Small Business Act (15 U.S.C. 644(g)) to require the President to annually establish two Government-wide goals for procurement contracts, one for contract awards to small business concerns and another for contract awards to small business concerns owned and controlled by socially and economically disadvantaged individuals. Section 503 revises section 15(h) of the Small Business Act (15 U.S.C. 644(h)) to establish additional reporting requirements that facilitate monitoring achievement of the Government-wide goals.

2. Authority. This Policy Letter is issued pursuant to sections 502 and 503 of the Business Opportunity Development Reform Act of 1988 (Public Law 100–656), and section 6 of the Office of Federal Procurement Policy Act, 41 U.S.C. 405, which empowers the Administrator for Federal Procurement Policy to prescribe Government-wide procurement policies.

3. Background. Currently, agencies, in consultation with the Small Business Administration (SBA), develop annual goals for the participation of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals (small disadvantaged businesses) in contracts awarded by Federal agencies. SBA monitors agency performance and reports such achievements to Congress. Section 502 of the "Business Opportunity Development Reform Act of 1988" requires the establishment of two Government-wide goals for contract awards. Section 503 of the Act requires SBA to report the agencies' actual achievement of these goals to the President for inclusion in his State of Small Business Report.

4. Policy. For small business concerns, a Government-wide goal of awarding 20 percent of the total value of all prime contract awards to small business concerns for each fiscal year is established. The Government-wide goal for small disadvantaged business concerns shall be five percent of the total value of all prime contract and subcontracts awards for each fiscal year. The five percent goal for small disadvantaged businesses shall be applied separately to prime contracts and subcontracts. This approach results in two distinct small disadvantaged business goals, one for all prime contracts awarded to small disadvantaged businesses and another for all subcontract awarded to small disadvantaged businesses.

For the purposes of this program, small business concerns owned and controlled by socially and economically disadvantaged individuals shall be considered a subset of small businesses and, therefore, prime contract awards to such concerns shall be counted towards achievement of the small business goal.

5. Agency Reporting. Agencies shall submit reports to SBA regarding goal achievement that will contain the following information:

(a) Agency goals for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals and their actual levels of participation.

(b) The number and dollar value of contracts awarded to small business concerns and small business concerns that are owned and controlled by socially and economically disadvantaged individuals through:

(1) Noncompetitive negotiations,

(2) Competition restricted to small business concerns owned and controlled by socially and economically disadvantaged individuals,

(3) Competition restricted to small business concerns, and

(4) Unrestricted competitions.

(c) The number and dollar value of subcontracts awarded to small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals.

(d) The number and dollar value of prime contracts nd subcontracts awarded to women-owned small business enterprises.

(e) An analysis of any failure to achieve the agency goal(s) and what actions are planned to achieve the goal(s) in the succeeding fiscal year.

(f) Other categories of information necessary to implement statutory procurement preference programs.

6. Responsibilities. This policy shall be implemented through SBA's annual request for small business goals, entitled "Guidelines on Goals Under Procurement Preference Programs". Appropriate changes shall be made to the aforementioned document to accommodate the policy. Each department or agency, in consultation with SBA, shall continue to establish and annual goal that represents the estimated maximum practicable opportunity for small businesses to participate in the performance of contracts let by such agency. The Office of Federal Procurement Policy and SBA will be responsible for ensuring that the cumulative annual prime contract goals for all agencies meet or exceed the annual Government-wide prime contract goal established.

7. Applicability. This letter is applicable to Federal contracts. It is not applicable to Federal grants.

8. Information Contact. Information about this policy may be obtained by contacting Robert L. Neal, Jr., Office of Federal Procurement Policy, (202) 395–6810.

9. Effective Date. This policy is effective 30 days from date of issuance.

10. Review Date. This policy will be reviewed within 3 years from the date of issuances.

Allan V. Burman,

Administrator.

[FR Doc. 91–6564 Filed 3–19–91; 8:45 am]

BILLING CODE 3110–01–M

POSTAL SERVICE

Privacy Act of 1974; Systems of Records

AGENCY: Postal Service.

ACTION: Notice of System of Records Changes.

SUMMARY: This notice publishes editorial changes to the Postal Service's Privacy Act system of records "Inspection Requirements—Investigative File System, 080.010" that will better inform individuals if the system might contain information about them.

EFFECTIVE DATE: March 20, 1991.

ADDRESSES: USPS Records Officer, US Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–5010.

FOR FURTHER INFORMATION CONTACT: Betty Sheriff, Records Office (202) 268–5158.

SUPPLEMENTARY INFORMATION: Various editorial revisions are being made to USPS 080.010. The revisions do not alter the character or use of information contained in the system, but rather improve the current system description.

Specifically, the general description of the "Categories of Records Covered by the System" is being strengthened by providing a listing of various statutes under which the Inspection Service has investigative and enforcement authority. The listing does not change or expand the categories of records historically kept within the system; but, it is intended to provide information that will help individuals determine whether the system contains information about them. Similarly, and with the same intent, the current description of the categories of individuals covered by the system is being reworded to clearly depict the groups of individuals on whom records may be kept for administrative versus criminal/civil investigative matters. Changes to other segments of the system notice are less extensive, but also serve to clarify.

The Postal Service published the complete text of its systems of records on October 26, 1989 (54 FR 43652). That publication included USPS 080.010 and a "Prefatory Statement of Routine Uses" containing the general routine uses referenced in USPS 080.010. Following is the complete text of USPS 080.010 with revisions made by this notice appearing in italics.

USPS 080.010

SYSTEM NAME:

Inspection Requirements—Investigative File System, 080.010.

SYSTEM LOCATION:

Office of the (1) Chief Postal Inspector, Headquarters; (2) Regional Chief Postal Inspector (five regions); and (3) Inspector-in-Charge (39 divisions).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Subjects of investigations, unsolicited information, surveillance; complainants, informants, witnesses; and other persons related to investigations.

b. Applicants and current and former Postal Service personnel and contractors and persons providing information related to employment suitability checks on those individuals.

c. Applicants for and appointees to sensitive positions in the Postal Service and persons providing information related to security clearance checks on those individuals.

CATEGORES OF RECORDS IN THE SYSTEM:

Information within this system relates to Inspection Service investigations carried out in accordance with applicable policies, regulations, procedures, and statutes. The investigations may relate to criminal, civil, or administrative matters, including personnel suitability and security clearance. Generally, investigative case files are physically located in the responsible Inspection Service division or regional Headquarters. These files may contain investigative reports, background data including arrest records, statements of informants and witnesses, laboratory reports of evidence analysis, search warrants, summons and subpoenas, and other information related to the investigation. Personal data in the system may include fingerprints, handwriting samples, reports of confidential informants physical identifying data, voiceprints, polygraph tests, photographs, and individual personnel and payroll information. Inspection Service database systems contain additional or summary duplicative case file and other information in support of investigations. In addition, Inspection Service divisions maintain reference files and indexes, as needed, for quick access in day-to-day operations.

The specific authority for the postal Inspection Service to investigate postal offenses and civil matters relating to the Postal Service is conferred at 39 U.S.C. 404(a)(7), 18 U.S.C. 3061, and 5 U.S.C. App 3. In the exercise of that authority, the Inspection Service conducts investigations pursuant to the following Federal statutes and administrative rules which are not intended to be all-inclusive. Although other Federal agencies may have primary investigative jurisdiction over some of the statutes listed, the Inspection Service applies those statutes for cases involving postal personnel or property or as authorized by the Attorney General of the United States (18 U.S.C. 3061(b)(2)). These are the primary statutes that impact the Postal Inspection Service, but an investigation may involve statutes not listed.

1. False Representations; Lotteries. Where any person is engaging in conducting a scheme or device for obtaining money or property through the mail by means of false representations or is conducting a lottery, the Postal Service may issue an order to return such mail to the sender (Title 39, United States Code, Section 3005).

2. Detention of Mail for Temporary Periods. Relates to violations of 39 U.S.C. 3005 and 3006. The U.S. District Court may issue a temporary restraining order and preliminary injunction directing the detention of defendant's incoming mail (Title 39, United States Code, Section 3007).

3. Mailing of Sexually Oriented Advertisements (SOA). Permits customers to file a statement with the Postal Service that they do not want to receive SOAs; a mailer who sends that person unsolicited SOA may be subject to civil and criminal sanctions penalties under 39 U.S.C. 3011 and 18 U.S.C. 1735–37 (Title 39, United States Code, Section 3010).

4. Circulars and Rewards. Covers authorization and procedures (Title 39, Code of Federal Regulations, § 233.2).

5. Mail Covers. Covers policy, authorization and review procedures for mail covers; an investigative technique by which a record is made of any data appearing on outside cover of mail matter (Title 39, Code of Federal Regulations, § 233.3).

6. Withdrawal of Mail Privileges. Applies to false representation and lottery orders and fictitious name or address orders (Title 39, Code of Federal Regulations, § 233.4).

7. Requesting Financial Records from a Financial Institution. Covers purpose, authorization and procedures (Title 39, Code of Federal Regulations, § 233.5).

8. Test Purchases Under 39 U.S.C. 3005(e). Covers authorization and procedures (Title 39, Code of Federal Regulations, § 233.6).

9. Conduct on Postal Property. Covers posted regulations governing conduct on postal property (Title 39, Code of Federal Regulations, § 232.1).

10. Responsibility for the Protection of Post Offices. Designates Chief Postal Inspector as Security Officer (Title 39, Code of Federal Regulations, § 231.1).

11. Internal Financial Audits. The Postal Service shall maintain an adequate internal audit of the financial transactions of the Postal Service (Title 39, United States Code, Section 2008(b)).

12. Principals. Applies to aiding and abetting (Title 18, United States Code, Section 2).

13. Special Maritime and Territorial Jurisdiction of the United States defined. Applies to certain USPS facilities that fall under this jurisdiction (Title 18, United States Code, Section 7).

14. Obligations or Other Security of the United States defined. Includes stamps and money orders (Title 18, United States Code, Section 8).

15. Laws of States Adopted for Areas Within Federal Jurisdiction. Makes states statutes applicable on federal properties when no federal law exists (Title 18, United States Code, Section 13).

16. Destruction of Aircraft or Aircraft Facilities. Applies to mailed explosive devices that result in such destruction (Title 18, United States Code, Section 32).

17. Destruction of Motor Vehicles or Motor Vehicle Facilities. Applies to mailed explosive devices that result in such destruction (Title 18, United States Code, Section 33).

18. Imparting or Conveying False Information. Prohibits the giving of false information concerning crimes (Title 18, United States Code, Section 35).

19. Importation or Shipment of Injurious Mammals, Birds, Fish (including Mollusks and Crustacea), Amphibia, and Reptiles; Permits, Specimens for Museums; Regulations. Applies to USPS when such items are mailed (Title 18, United States Code, Section 42).

20. Transportation of Water Hyacinths. Applies to USPS when such items are mailed (Title 18, United States Code, Section 46).

21. Arson Within Special Maritime and Territorial Jurisdiction. Applies to arson of USPS facilities within this jurisdiction (Title 18, United States Code, Section 81).

22. Assaulting, Resisting or Impeding Certain Officers or Employees. Applies to USPS employees (Title 18, United States Code, Section 111).

23. Assaults Within Maritime and Territorial Jurisdiction. Applies to certain USPS facilities (Title 18, United States Code, Section 113).

24. Maiming Within Maritime and Territorial Jurisdiction. Applies to certain USPS facilities (Title 18, United States Code, Section 114).

25. Influencing, Impeding, or Retaliating Against a Federal Official by Threatening or Injuring a Family Member. Applies to USPS employees (Title 18, United States Code, Section 115).

26. Bribery of Public Officials and Witnesses. Applies to USPS employees (Title 18, United States Code, Section 201).

27. Compensation to Members of Congress, Officers, and Others in Matters Affecting the Government. Applies to USPS employees (Title 18, United States Code, Section 203).

28. Activities of Officers and Employees in Claims Against and Other Matters Affecting the Government. Prohibits certain activities by USPS employees in regard to making claims against the USPS (Title 18, United States Code, Section 205).

29. Disqualification of Former Officers and Employees; Disqualification of Partners of Current Officers and Employees. Covers post-employment and partnership restrictions applicable to USPS (Title 18, United States Code, Section 207).

30. Acts Affecting a Personal Financial Interest. Prohibits USPS employees from making official decisions which impact personal finances (Title 18, United States Code, Section 208).

31. Salary of Government Officials and Employees Payable Only by United States. Applies to USPS employees who are prohibited from receiving outside salary supplements (Title 18, United States Code, Section 209).

32. Offer Procure Appointive Public Office. Prohibits influence in USPS appointments (Title 18, United States Code, Section 210).

33. Acceptance or Solicitation to Obtain Appointive Public Office. Prohibits improper influence in USPS appointments (Title 18, United States Code, Section 211).

34. Void Transactions in Violation of Chapter; Recovery by the United States. Allows recovery by USPS for violations of 18 U.S.C. 201–211 (Title 18, United States Code, Section 218).

35. Civil Disorders. Applies to unlawful conduct by USPS employees who engage in violence (Title 18, United States Code, Section 231).

36. Taking or Using Papers Relating to Claims. Applies to USPS (Title 18, United States Code, Section 285).

37. Conspiracy to Defraud the Government with Respect to Claims. Applies to USPS (Title 18, United States Code, Section 286).

38. False, fictitious or Fraudulent Claims. Applies to USPS (Title 18, United States Code, Section 287).

39. False Claims for Postal Losses. Prohibits false claims by USPS patrons (Title 18, United States Code, Section 288).

40. Conspiracy to Commit Offense or Defraud United States. Enforced by USPS in regard to any crime under investigation (Title 18, United States Code, Section 371).

41. Conspiracy to Impede or Injure Officer. Applies to conspiracies against USPS employees (Title 18, United States Code, Section 372).

42. Solicitation to Commit a Crime of Violence. Applies to any violent crime against USPS (Title 18, United States Code, Section 373).

43. Officer or Employee Contracting with Member of Congress. Prohibits USPS employees from contracting with Congress (Title 18, United States Code, Section 432).

44. Mail Contracts. Prohibits USPS employees from being interested in USPS contracts (Title 18, United States Code, Section 440).

45. Postal Supply Contracts. Prohibits USPS employees from being interested in or fixing bids for postal supply contracts (Title 18, United States Code, Section 441).

46. Contractors' Bonds, Bids and Public Records. Concerns false mailing of above for purpose of defrauding USPS (Title 18, United States Code, Section 494).

47. Contracts, Deeds, and Powers of Attorney. Concerns false mailing of above to defraud USPS (Title 18, United States Code, Section 495).

48. Money Orders. Covers a variety of prohibited conduct related to money orders (Title 18, United States Code, Section 500).

49. Postage Stamps, Postage Meter Stamps, and Postal Cards. Covers a variety of prohibited conduct related to these matters (Title 18, United States Code, Section 501).

50. Postage and Revenue Stamps of Foreign Governments. Covers forgery of foreign postage (Title 18, United States Code, Section 502).

51. Postmarking Stamps. Covers forgery or counterfeit postmarks and postmarking equipment (Title 18, United States Code, Section 503).

52. Printing and Filming of United States and Foreign Obligations and Securities. Covers reproduction of postage stamps (Title 18, United States Code, Section 504).

53. Seals of Departments or Agencies. Covers certain prohibited conduct in regard to USPS seals (Title 18, United States Code, Section 506).

54. Transportation Requests of Government. Covers certain prohibited conduct in regard to USPS Government Transportation Requests (Title 18, United States Code, Section 508).

55. Forging Endorsements on Treasury Checks or Bonds or Securities of the United States. Involves stolen Treasury checks (Title 18, United States Code, Section 510).

56. Smuggling Goods into the United States. Self-explanatory (Title 18, United States Code, Section 545).

57. Smuggling Goods Into Foreign Counties. Self-explanatory (Title 18, United States Code, Section 546).

58. Making Political Contributions. Applies to USPS employees (Title 18, United States Code, Section 603).

59. Public Money, Property or Records. Covers theft or embezzlement by USPS employees and outsiders of USPS property (Title 18, United States Code, Section 641).

60. Tools and Materials for Counterfeiting Purposes. Self-explanatory (Title 18, United States Code, Section 642).

61. Accounting Generally for Public Money. Covers the accountability of USPS employees for public funds (Title 18, United States Code, Section 643).

62. Custodians, Generally, Misusing Public Funds. Covers misuse of USPS funds by USPS officers (Title 18, United States Code, Section 648).

63. Custodians Failing to Deposit Moneys; Persons Affected. Covers misuses of public funds (USPS) by any person charged with safekeeping (Title 18, United States Code, Section 649).

64. Disbursing Officer Misusing Public Funds. Covers misuse of public funds by USPS disbursing officers (Title 18, United States Code, Section 653).

65. Officer or Employee of United States Converting Property of Another. Covers USPS employees who do this (Title 18, United States Code, Section 654).

66. Within Special Maritime and Territorial Jurisdiction. Covers theft within certain USPS facilities (Title 18, United States Code, Section 661).

67. Receiving Stolen Property Within Special Maritime and Territorial Jurisdiction. Covers certain USPS facilities (Title 18, United States Code, Section 662).

68. Solicitation or Use of Gifts. Covers solicitation of personal gifts under official guise by USPS employees (Title 18, United States Code, Section 663).

69. Official Badges, Identification Cards, Other Insignia. Covers likenesses of USPS official insignia or I.D. (Title 18, United States Code, Section 701).

70. Explosive and Destructive Devices. Applies to statutes used in conjunction with mailed bombs and

infernal devices (Title 18, United States Code, Section 841 and 842).

71. Threats Against President and Successors to the Presidency. Applies to when such threat is mailed (Title 18, United States Code, Section 871).

72. Extortion by Officers or Employees of the United States. Includes extortion by USPS employees (Title 18, United States Code, Section 872).

73. Blackmail. Applies to when threat and demand is mailed (Title 18, United States Code, Section 873).

74. Kickbacks from Public Works Employee. Applies to USPS employees (Title 18, United States Code, Section 874).

75. Mailing Threatening Communications. Covers extortion by mail (Title 18, United States Code, Section 876).

76. Mailing Threatening Communications From Foreign Country. Covers extortion by mail deposited in a foreign country addressed to United States (Title 18, United States Code, Section 877).

77. Officer or Employee of the United States. Covers false personation of postal employee (Title 18, United States Code, Section 912).

78. Unlawful Acts. Covers various firearm laws in which USPS investigates mail violations of these regulations (Title 18, United States Code, Section 922).

79. Civil Forfeiture. Makes property involved in transaction in violation of law subject to civil forfeiture (Title 18, United States Code, Section 981).

80. Criminal Forfeiture. Makes property involved in transaction in violation of law subject to crimnal forfeiture (Title 18, United States Code, Section 982).

81. Statements or Entries Generally. Covers false statements or entries by USPS employees (Title 18, United States Code, Section 1001).

82. Possession of False Papers to Defraud United States. Covers USPS as agency of U.S. (Title 18, United States Code, Section 1002).

83. Bank Entries, Reports, and Transactions. Covers unauthorized or fraudulent bank entries, reports, or transactions by employees of Federal Reserve bank, or member, national or insured bank (Title 18, United States Code, Section 1005).

84. Official Certificates or Writings. Covers false official writings by USPS employees (Title 18, United States Code, Section 1018).

85. Fraud and Related Activity in Connection with Identification Documents. Self-explanatory. USPS has primary jurisdiction over mailed documents (Title 18, United States Code, Section 1028).

86. Fraud and Related Activity in Connection with Access Devices. Self-explanatory. USPS investigates fraud relating to mailed devices (Title 18, United States Code, Section 1029).

87. Fraud and Related Activity in Connection with Computers. Self-explanatory. USPS investigates fraud relating to USPS (Title 18, United States Code, Section 1030).

88. Murder. Self-explanatory. USPS investigates murder in postal facilities under special territorial jurisdiction (Title 18, United States Code, Section 1111).

89. Manslaughter. Self-explanatory. USPS investigates manslaughter violations in postal facilities under special territorial jurisdiction (Title 18, United States Code, Section 1112).

90. Attempt to Commit Murder or Manslaughter. Self-explanatory. USPS investigates violations in postal facilities under special territorial jurisdiction (Title 18, United States Code, Section 1113).

100. Protection of Officers and Employees of the United States. Covers USPS employees (Title 18, United States Code, Section 1114).

101. Conspiracy to Murder. Applies when such actions involve USPS employees and certain facilities (Title 18, United States Code, Section 1117).

102. Kidnapping. Applies when such actions involve USPS officers and employees (Title 18, United States Code, Section 1201).

103. Ransom Money. Covers ransom under Section 1201 (Title 18, United States Code, Section 1202).

104. Hostage Taking. Applies when such actions involve USPS employees (Title 18, United States Code, Section 1203).

105. Lotteries. Covers any lottery activity by mail investigated by USPS (Title 18, United States Code, Sections 1301, 1302, 1303, 1305, 1306, 1307).

106. Frauds and Swindles. Covers mail fraud (Title 18, United States Code, Section 1341).

107. Fictitious Name or Address. Concerns false name or address filed with USPS (Title 18, United States Code, Section 1342).

108. Fraud by Wire, Radio or Television. Self-explanatory. Can be used in conjunction with a mail fraud prosecution (Title 18, United States Code, Section 1343).

109. Bank Fraud. Self-explanatory. Can be used in conjunction with mail fraud prosecution (Title 18, United States Code, Section 1344).

110. Injunctions Against Fraud. Self-explanatory. Can be used in mail fraud cases (Title 18, United States Code, Section 1345).

111. Government Property or Contracts. Covers malicious mischief against USPS (Title 18, United States Code, Section 1361).

112. Buildings or Property Within Special Maritime and Territorial Jurisdiction. Covers destruction or injury of USPS buildings in this category (Title 18, United States Code, Section 1363).

113. Mailing Obscene or Crime-Inciting Matter. Covers mailed pornography or other vile material (Title 18, United States Code, Section 1461).

114. Importation or Transportation of Obscene Matters. Covers mailed items originating outside the United States (Title 18, United States Code, Section 1462).

115. Mailing Indecent Matter on Wrappers or Envelopes. Covers visible mailed obscene material (Title 18, United States Code, Section 1463).

116. Transportation of Obscene Matters for Sale or Distribution. Covers mailed items (Title 18, United States Code, Section 1465).

117. Criminal Forfeiture. Covers obscene material (Title 18, United States Code, Section 1467).

118. Assault on Process Service. Covers USPS Inspectors (Title 18, United States Code, Section 1501).

119. Influencing or Injuring Officer or Juror Generally. Covers mailed communications (Title 18, United States Code, Section 1503).

120. Obstruction of Proceedings Before Departments, Agencies, and Committees. Covers mailed threats and communications (Title 18, United States Code, Section 1505).

121. Obstruction of Criminal Investigations. Covers USPS investigations (Title 18, United States Code, Section 1510).

122. Obstruction of State or Local Law Enforcement. Self-explanatory (Title 18, United States Code, Section 1511).

123. Tampering with a Witness, Victim or an Informant. Self-explanatory (Title 18, United States Code, Section 1512).

124. Retaliating Against a Witness, Victim or an Informant. Self-explanatory (Title 18, United States Code, Section 1513).

125. Laws Governing Postal Savings. Protects public moneys conveyed by mail (Title 18, United States Code, Section 1691).

126. Foreign Mail as United States Mail. Treats foreign mail as U.S. Mail for the purpose of law while transported

in the U.S. (Title 18, United States Code, Section 1692).

127. Carriage of Mail Generally. Concerns Carriage of letters contrary to law (Title 18, United States Code. Section 1693).

128. Carriage of Matter Out of Mail Over Post Routes. Covers letters on which postage has not been paid (Title 18, United States Code, Section 1694).

129. Carriage of Matter Out of Mail on Vessels. Covers letters on which postage has not been paid (Title 18, United States Code, Section 1695).

130. Private Express for Letters and Packets. Covers private carriage of letters (Title 18, United States Code, Section 1696).

131. Transportation of Persons Acting as Private Express. Covers a carrier assisting a private express carrier (Title 18, United States Code, Section 1697).

132. Prompt Delivery of Mail from Vessel. Concerns timely delivery of letters to post office by vessels passing between ports or places in US (Title 18, United States Code, Section 1698).

133. Certification of Delivery from Vessel. Concerns certification by officer of vessel of delivery of letters to post office (Title 18, United States Code, Section 1699).

134. Desertion of Mails. Concerns USPS employee deserting mail in its custody (Title 18, United States Code, Section 1700).

135. Obstruction of Mails Generally. Concerns obstructing or retarding passage of mail (Title 18, United States Code, Section 1701).

136. Obstruction of Correspondence. Prohibits the taking of any mail for the purpose of obstruction or to pry into the secrets of another (Title 18, United States Code, Section 1702).

137. Delay or Destruction of Mail or Newspapers. Prohibits delaying, destruction or opening of mail before delivery (Title 18, United States Code, Section 1703).

138. Keys or Locks Stolen or Reproduced. Prohibits theft, unauthorized possession or reproduction of certain USPS keys and locks (Title 18, United States Code, Section 1704).

139. Destruction of Letter Boxes or Mail. Prohibits destruction of vandalizing of mail receptacles (Title 18, United States Code, Section 1705).

140. Injury to Mail Bags. Prohibits breaking into mail bags with intent to steal or render insecure (Title 18, United States Code, Section 1706).

141. Theft of Property Used by Postal Service. Prohibits theft or appropriation of USPS property (Title 18, United States Code, Section 1707).

142. Theft or Receipt of Stolen Mail Matter Generally. Prohibits theft or unauthorized possession of mail before delivery (Title 18, United States Code, Section 1708).

143. Theft of Mail Matter by Officer or Employee. Prohibits theft or unauthorized possession of mail before delivery by USPS employees (Title 18, United States Code, Section 1709).

144. Theft of Newspapers. Prohibits theft of newspaper from mail by USPS employees (Title 18, United States Code, Section 1710).

145. Misappropriation of Postal Funds. Prohibits unauthorized use or theft of funds by USPS employees (Title 18, United States Code, Section 1711).

146. Falsification of Postal Returns to Increase Compensation. Prohibits USPS employees from making false entries to increase their compensation (Title 18, United States Code, Section 1712).

147. Issurnace of Money Orders Without Payment. Prohibits USPS employees from issuing money orders without having previously received payment therefore (Title 18, United States Code, Section 1713).

148. Foreign Divorce Information as Nonmailable. Prohibits the mailing of foreign divorce information (Title 18, United States Code, Section 1714).

149. Firearms as Nonmailable. Prohibits mailing of concealable firearms except between certain individuals (Title 18, United States Code, Section 1715).

150. Injurious Articles as Nomailable. Prohibits a wide variety of articles from being mailed (Title 18, United States Code, Section 1716).

151. Nomailable Motor Vehicle Master Keys. Prohibits mailing of any article declared nomailable under 39 U.S.C. 3002 (Title 18, United States Code, Section 1716A).

152. Nomailable Plants. Self-explanatory (Title 18, United States Code, Section 1716B).

153. Forged Agricultural Certifications. Prohibits forging or counterfeiting agricultural certifications (Title 18, United States Code, Section 1716C).

154. Letters and Writings as Nomailable; Opening Letters. Prohibits the mailing of certain types of letters (Title 18, United States Code, Section 1717).

155. Libelous Matter on Wrappers or Envelopes. Prohibits are mailing of certain types of material that are visable on the outside (Title 18, United States Code, Section 1718).

156. Franking Privilege. Prohibits the unauthorized use of official envelopes (Title 18, United States Code, Section 1719).

157. Cancelled Stamps and Envelopes. Prohibits reuse of previously used postage or selling of same to be used again (Title 18, United States Code, Section 1720).

158. Sale or Pledge of Stamps. Prohibits misuse of postage stamps (Title 18, United States Code, Section 1721).

159. False Evidence to Secure Second-Class Rate. Prohibits the giving of false information to secure second-class rate (Title 18, United States Code, Section 1722).

160. Avoidance of Postage by Using Lower Class Matter. Prohibits avoidance of postage by securing improper lower class rate (Title 18, United States Code, Section 1723).

161. Postage on Mail Delivered by Foreign Vessels. Concerns transportation of mail outside of U.S. at the compensation fixed under authority of law (Title 18, United States Code, Section 1724).

162. Postage Unpaid on Deposited Mail Matter. Prohibits use of mail boxes for matter on which postage has not been paid (Title 18, United States Code, Section 1725).

163. Postage Collected Unlawfully. Prohibits collection of postage at a greater rate than authorized by law (Title 18, United States Code, Section 1726).

164. Weight of Mail Increased Fraudulently. Prohibits fraudulent weighting to increase compensation of carrier (Title 18, United States Code, Section 1728).

165. Post Office Conducted Without Authority. Prohibits conducting a business as a post office without proper authority (Title 18, United States Code, Section 1729).

166. Uniforms of Carriers. Prohibits unauthorized wearing of mail carrier uniforms (Title 18, United States Code, Section 1730).

167. Vehicles Falsely Labeled as Carriers. Prohibits unauthorized marking of vehicle as mail carrier (Title 18, United States Code, Section 1731).

168. Approval of Bond or Sureties by Postmaster. Concerns requirements for proper bond approval (Title 18, United States Code, Section 1732).

169. Mailing Periodical Publications Without Prepayment of Postage. Prohibits the mailing of publications without previous payment of postage (Title 18, United States Code, Section 1733).

170. Editorials and Other Matter as Advertisements. Prohibits improper use of second-class mail (Title 18, United States Code, Section 1734).

171. Sexually Oriented Advertisements. Prohibits the mailing of any material in violation of 39 U.S.C. 3010 or in violation of any regulations of the Board of Governors (Title 18, United States Code, Section 1735).

172. Restrictive Use of Information. Concerns use of information gathered under 39 U.S.C. 3010 (Title 18, United States Code, Section 1736).

173. Manufacturer of Sexually Related Mail Matter. Prohibits manufacture or reproduction of material in violation of 39 U.S.C. 3009 or 3010 (Title 18, United States Code, Section 1737).

174. Mailing Private Identification Documents Without a Disclaimer. Prohibits the mailing of identification documents that do not state "not a government document" as prescribed by law (Title 18, United States Code, Section 1739).

175. Transportation or Importation. Concerns transport in interstate commerce of goods manufactured by convicts or prisoners (Title 18, United States Code, Section 1761).

176. Marking Packages. Concerns marking of packages described in section 1761 (Title 18, United States Code, Section 1762).

177. Transportation of Dentures. Concerns transport of artificial teeth made by person other than licensed dentist (Title 18, United States Code, Section 1821).

178. Disloyalty and Asserting the Right to Strike Against the Government. Concerns violation of section 7311 of title 5 (Title 18, United States Code, Section 1918).

179. False Statement to Obtain Unemployment Compensation. Self-explanatory (Title 18, United States Code, Section 1919).

180. False Statement to Obtain Federal Employee's Compensation. Self-explanatory (Title 18, United States Code, Section 1920).

181. Receiving Federal Employees' Compensation After Marriage. Self-explanatory (Title 18, United States Code, Section 1921).

182. False or Withheld Report Concerning Federal Employees' Compensation. Self-explanatory (Title 18, United States Code, Section 1922).

183. Fraudulent Receipt of Payments of Missing Persons. Self-explanatory (Title 18, United States Code. Section 1923).

184. Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises (Title 18, United States Code, Section 1952).

185. Interstate Transportation of Wagering Paraphernalia (Title 18, United States Code, Section 1953).

186. Laundering of Monetary Instruments (Title 18, United States Code, Section 1956).

187. Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity (Title 18, United States Code, Section 1957).

188. Racketeer Influenced and Corrupt Organizations. Makes it illegal to invest in a legitimate enterprise with funds gained through an illegal venture (Title 18, United States Code, Sections 1961–1963).

189. False Entries and Report of Moneys or Securities. Prohibits Federal employee charged with record/account keeping from making false entry (Title 18, United States Code, Section 2073).

190. Personal Property of United States. Concerns robbery of personal property belonging to the United States (Title 18, United States Code, Section 2112).

191. Mail, Money or Other Property of United States. Concerns assault of person having lawful charge of mail with intent to rob (Title 18, United States Code, Section 2114).

192. Post Office. Concerns forcible entry into post office with intent to commit larceny or other depredation (Title 18, United States Code, Section 2115).

193. Railway or Steamboat Post Office. Prohibits entry by violence (Title 18, United States Code, Section 2116).

194. Robberies and Burglaries Involving Controlled Substances. Self-explanatory (Title 18, United States Code, Section 2118).

195. Assault or Resistance. Concerning assault on or resistance to persons authorized to serve search warrants (Title 18, United States Code, Section 2231).

196. Additional Statutes Dealing with the Destruction or Rescue of Seized Property, Searches which Exceed the Authority of the Warrant, Malicious Procuring of Search Warrants and Searches Without Warrant. Self-explanatory (Title 18, United States Code, Section 2232–2236).

197. Sexual Exploitation of Children. Self-explanatory (Title 18, United States Code, Section 2251).

198. Selling or Buying of Children. Self-explanatory (Title 18, United States Code, Section 2251A).

199. Certain Activities Relating to Material Involving the Sexual Exploitation of Minors. Concerns mailing any visual depiction of a minor engaging in sexually explicit conduct (Title 18, United States Code, Section 2252).

200. Criminal Forfeiture. Provides for forfeiture of proceeds and property from persons convicted of violations of section 2251 or 2252 (Title 18, United States Code, Section 2253).

201. Civil Forfeiture. Provides for the forfeiture of property used in producing, reproducing, transporting, shipping or receiving any visual depiction in violation of chapter 110 (Title 18, United States Code, Section 2254).

202. Recordkeeping Requirements (Title 18, United States Code, Section 2257).

203. Transportation of Stolen Goods, Securities, Moneys, Fraudulent State Tax Stamps or Articles Used in Counterfeiting (Title 18, United States Code, Section 2314).

204. Sales or Receipt of Stolen Goods, Securities, Moneys, or Fraudulent State Tax Stamps. (Title 18, United States Code, Section 2315).

205. Trafficking in Counterfeit Labels for Photorecords, and Copies of Motion Pictures or Other Audiovisual Works. Applies to subject trafficking while using the mails (Title 18, United States Code, Section 2318).

206. Criminal Infringement of a Copyright. Self-explanatory (Title 18, United States Code, Section 2319).

207. Trafficking in Counterfeit Goods or Services. Applies to subject trafficking while using the mails (Title 18, United States Code, Section 2320).

208. Trafficking in Certain Motor Vehicles or Motor Vehicle Parts. Self-explanatory (Title 18, United States Code, Section 2320).

209. Wire Interception and Interception of Oral Communications. Applies to electronic surveillance statutes (Title 18, United States Code, Sections 2510–2520).

210. Powers of Postal Personnel. Covers powers of postal personnel to serve warrants and subpoenas and make arrests (Title 18, United States Code, Section 3061).

211. Statutes Concerning the Procedures for Searches and Seizures. Self-explanatory (Title 18, United States Code, Sections 3101–3116).

212. Protection of Witnesses. Self-explanatory (Title 18, United States Code, Sections 3521–3528).

213. False Claims. Concerns civil penalty when false claims are made (Title 31, United States Code, Section 3729).

214. Civil Actions for False Claims. The Attorney General may bring a civil action under this section (Title 31, United States Code, Section 3730).

215. Reports on Domestic Coins and Covering Transactions (Title 31, United States Code, Section 5313).

216. Structuring Transactions to Evade Reporting Requirement

Prohibited (Title 31, United States Code, Section 5324).

217. State Terminal Inspection; Transmission of Mailed Packages for State Inspection; Nonmailable Matter; Punishment for Violations; Rules and Regulations by Postmaster General. Concerns mailed agricultural products (Title 7, United States Code, Section 166).

218. Fraudulent Use of Credit Cards. Self-explanatory (Title 15, United States Code, Section 1644).

219. Various Statutes Dealing with the Protection of Federal Property, Including USPS Property, and With the Posting of Regulations and the Creation of Special Policemen. Self-explanatory (Title 40, United States Code, Sections 318, 318a, 318b, 318c, 318d).

220. Transportaion of Mail. Concerns transportation of mail by aircraft, including free travel for postal employees charged with the mail (Title 49, United States Code, Section 1375).

221. Anabolic Steroids (Title 21, United States Code, Section 333(e)).

222. Prohibited Acts A. Makes it unlawful to manufacture, distribute, or dispense, with intent to distribute or dispense, a controlled substance (Title 21, United States Code, Section 841).

223. Prohibited Acts C. Applies to unlawful acts involving controlled substances (Title 21, United States Code, Section 843(b)).

224. Penalty for Simple Possession (Title 21, United States Code, Section 844).

225. Attempt and Conspiracy (Title 21, United States Code, Section 846).

226. Use of Postal Service for Sale of Drug. Self-explanatory (Title 21, United States Code, Section 857).

227. Forfeitures (Title 21, United States Code, Section 881).

228. Importation of Controlled Substances. Self-explanatory (Title 21, United States Code, Section 952).

229. Exportation of Controlled Substances. Self-explanatory (Title 21, United States Code, Section 953).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 404, *18 U.S.C. 3061 and 5 U.S.C. App. 3.*

PURPOSE(S):

To provide information related to investigation of criminal, *civil, or administrative matters, including* employee and contractor background investigations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, C, D, E, F, G, H, J, K, L, and M listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:

1. In the course of conducting any official investigation or during the course of a trial or hearing or the preparation of a trial or hearing, a record may be disseminated to an agency, organization or individual when reasonably necessary to elicit information relating to the investigation, trial or hearing or to obtain the cooperation of a witness or informant;

2. A record relating to a case or matter may be disseminated to a Federal, State, or local administrative or regulatory proceeding or hearing in accordance with the procedures governing such proceeding or hearing;

3. A record relating to a case or matter may be disseminated in an appropriate Federal, State, local or foreign court or grand jury proceeding in accordance with established constitutional, substantive, or procedural law or practice;

4. A record relating to a case or matter may be disseminated to an actual or potential party or his or her attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, plea bargaining, or informal discovery proceedings;

5. A record relating to a case or matter that has been referred by an agency for investigation, prosecution, or enforcement, or that involves a case or matter within the jurisdiction of an agency, may be disseminated to such agency to notify the agency of the status of the case or matter or of any decision or determination that has been made, or to make such other inquiries and reports as are necessary during the processing of the case or matter.

6. A record relating to a person held in custody pending or during arraignment, trial, sentence, or extradition proceedings, or after conviction may be disseminated to a Federal, State, local or foreign prison, probation, parole, or pardon authority, or to any other agency or individual concerned with the maintenance, transportation or release of such a person.

7. A record relating to a case or matter may be disseminated to a foreign country pursuant to an international treaty or convention entered into and ratified by the United States or to an executive agreement;

8. A record may be disseminated to a Federal, State, local, foreign or international law enforcement agency to assist in the general crime prevention and detection efforts of the recipient agency or to provide investigative leads to such agency;

9. A record from this system may be disclosed to the public, news media, trade associations, or organized groups to provide information of interest to the public concerning the activities and the accomplishments of the Postal Service or its employees;

10. A record may be disseminated to a foreign country, through the United States Department of State or directly to the representative of such country, to the extent necessary to assist such country in apprehending and/or returning a fugitive to a jurisdiction that seeks that person's return.

11. To provide members of the American Insurance Association Index System with certain information relating to accidents and injuries.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Case records are stored in paper folders. Abbreviated, summary and identifying information pertaining to cases, and criminal intelligence information are stored on computer storage media.

RETRIEVABILITY:

Name of the individual.

SAFEGUARDS:

Investigative records are maintained in locked file cabinets, safes, or secured areas under the scrutiny of Inspection Service personnel who have been subjected to security clearance procedures. Access is further restricted by computer passwords when stored in electronic format.

Automated records can only be accessed through authorized terminals by authorized users. Computer software has been designed to protect data by controlling access, logging actions, and reporting exceptions and violations.

RETENTION AND DISPOSAL:

a. Records are maintained 1 to 15 years depending upon type. Exceptions may be granted for longer retention in specific instances. Paper records are destroyed by burning, pulping, or shredding. Computer tape/disk records are erased or destroyed.

b. Duplicate copies of investigative memorandums maintained by postal officials other than the Inspection Service are retained in accordance with official rather than Inspection Service disposition schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Postal Inspector, Inspection Service, USPS Headquarters, 475

L'Enfant Plaza SW., Washington, DC 20260–2100.

NOTIFICATION PROCEDURE:

Persons wishing to know whether information about them is contained in this system of records or if they were the subject of an investigation should furnish the SYSTEM MANAGER sufficient identifying information to distinguish them from other individuals of like name; identifying data will include name, *date of birth*, address, type of investigation, dates, places and the individuals involvement.

RECORD ACCESS PROCEDURES:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification and Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Personal interviews, written inquiries, and other records concerning persons involved with an investigation, whether subjects, applicants, witnesses, references, or custodians of record information.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Postal Service has promulgated regulations at 39 CFR 266.9 which exempt information contained in this system of records from various provisions of the Privacy Act depending upon the purpose for which the information was gathered and for which it will be used. Compliance with the disclosure (552a U.S.C. (d)) and other subsections of the Act are not compatible with investigative practice, and would substantially compromise the efficacy and integrity of Postal Inspection Service operations. The purposes for which records are kept within this system and the exemptions applicable to those records are as follows:

(a) Criminal law enforcement—In accordance with 5 U.S.C. 552a(j)(2), information compiled for this purpose is exempt from all of the provisions of the Act except the following sections: (b), (c)(1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), (11), and (i).

(b) Non-criminal investigatory—Material compiled for law enforcement purposes (and not already exempted by 5 U.S.C. 552a(j)(2)) is exempted from the following provisions of the Act: (c)(3), (d), (e)(4) (G), (H) and (I), and (f).

(c) Background investigations—Material compiled solely for the purpose of a background security investigation is exempted by 5 U.S.C. 552a(k)(5) from the following provisions of the Act: (c)(3), (d), (e)(4) (G), (H) and (I), and (f).

Appendix

Addresses of Regional Postal Inspectors

1. Central Region, 433 W Van Buren rm 712, Chicago IL 60607–5401.
2. Eastern Region, PO Box 3000, Bala Cynwyd PA 19004–3609.
3. Northeast Region, Gateway 2 Center 8th fl S, Newark NY 07175–0001.
4. Southern Region, 1407 Union Ave 10th fl, Memphis, TN 38161–0001.
5. Western Region, 850 Cherry Ave 5th fl, San Bruno Ca 94098–0100.

Addresses of Division Postal Inspectors-In-Charge

1. PO Box 16489, Atlanta GA 30321–0489.
2. PO Box 1856, Baltimore MD 21203–1856.
3. PO Box 2767, Birmingham AL 35202–2767.
4. PO Box 2217, Boston MA 02205–2217.
5. 685 Ellicott Square Bldg., Buffalo NY 14203–2545.
6. 2901 I 85 South CMF, Charlotte NC 28228–3000.
7. 433 W Van Buren St rm 642, Main Post Office Bldg, Chicago IL 60669–2201.
8. 120 W 5th St, suite 600, Cincinnati OH 45201–2057.
9. PO Box 5726, Cleveland OH 44101–0726.
10. PO Box 329, Denver CO 80201–0329.
11. PO Box 566, Des Moines IA 50302–0566.
12. PO Box 330119, Detroit MI 48232–6119.
13. PO Box 162929, Ft Worth TX 76161–2929.
14. PO Box 3535, Harrisburg PA 17105–3535.
15. PO Box 2169, Hartford CT 06145–2169.
16. PO Box 1276, Houston TX 77251–1276.
17. 3750 Guion Rd suite 300, Indianapolis IN 46222–1669.
18. 3101 Broadway suite 850, Kansas City MO 64111–2416.
19. PO Box 2000, Pasadena CA 91102–2000.
20. PO Box 3180, Memphis TN 38173–0180.
21. PO Box 520772, Miami FL 33152–0772.
22. PO Box 788, Milwaukee WI 53201–0788.
23. PO Box 509, Newark NJ 07101–0509.
24. PO Box 51690, New Orleans LA 70151–1690.
25. PO Box 555, New York NY 10116–0555.
26. 7717 Edgewater Dr suite 202, Oakland CA 94621–3013.
27. PO Box 7500, Philadelphia PA 19101–9000.
28. PO Box 20666, Phoenix AZ 85036–0666.
29. 1001 California Ave, Pittsburgh PA 15290–9000.
30. 912 SW Washington suite 790, Portland OR 97205–2898.
31. PO Box 25009, Richmond VA 23260–5009.
32. 1106 Walnut St., St Louis MO 63199–2201.
33. PO Box 64558, St Paul MN 55164–2201.
34. PO Box 2110, San Diego CA 92112–2110.
35. PO Box 882000, San Francisco CA 94188–2000.
36. GPO Box 3667, San Juan PR 00936–9614.
37. PO Box 400, Seattle WA 98111–4000.
38. PO Box 22526, Tampa FL 33622–2526.
39. PO Box 96096, Washington, DC 20066–6096.

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 91–6402 Filed 3–19–91; 8:45 am]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by Office of Management and Budget

Agency Clearance Officer—Kenneth A. Fogash (202) 272–2142

Upon written request copies available from: Securities and Exchange Commission, Public Reference Branch. Washington, DC 20549–1002.

Extension

File No. 270–8, Rule 15b1–3;
File No. 270–19, Rule 15b1–1 and Form BD;
File No. 270–204, Rule 19d–2

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. section 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval the following rules and forms under the Securities Exchange Act of 1934 (15 U.S.C. section 78 *et seq.*):

Rule 15b1–3, which provides that if a broker-dealer succeeds to or continues the business of a registered broker-dealer, the registration of the predecessor shall remain effective as the registration of the successor for 75 days after the succession provided that an amendment to Form BD is filed by the successor within 30 days after the date of succession. Approximately fifty respondents incur an estimated average of three burden hours to comply with this rule.

Rule 15b1–1 and Form BD, which provide the form for registration with the Commission as a broker or dealer. Approximately 2,500 respondents incur an estimated average of three burden hours to comply with this rule.

Rule 19d–2, which prescribes the form and content of applications to the Commission for stays of final disciplinary sanctions and summary actions of self-regulatory organizations. Nine respondents incur an estimated average of three burden hours to comply with this rule.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with Securities and Exchange Commission rules and forms

to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: March 13, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–6609 Filed 3–19–91; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18047; International Series Rel. No. 242; 812–7697]

Government of Israel; Notice of Application

March 18, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANT: The Government of Israel ("Israel"), on behalf of certain trusts.

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 6(e) that would grant an exemption from all provisions of the Act other than sections 26 (with certain exceptions), 36, 37, and (to the extent necessary to implement the above sections of the Act) 38 through 53.

SUMMARY OF APPLICATION: Applicant seeks an order exempting one or more trusts (the "Trusts") from all provisions of the Act except as described in this notice. Each Trust will hold a single note evidencing a loan to Israel. The timely payment of interest and principal due on each note will be guaranteed by the full faith and credit of the United States. Each Trust will issue a single class of non-redeemable certificates of beneficial interest that will represent the right to receive a *pro rata* share of the payments of principal and interest on the note held by that Trust.

FILING DATE: The application was filed on March 12, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. In order to enable the Trusts, as described herein, to offer certificates of beneficial interest by March 28, 1991, the usual period of time within which an interested person may request a hearing on the application has been shortened. The Commission has determined that, in view of the nature of the application and the necessity for action before March 28, 1991, the shortened period of public notification is necessary and reasonable. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 27, 1991, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, c/o Catherine C. McCoy, Arnold & Porter, 1200 New Hampshire Avenue NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Elizabeth G. Osterman, Staff Attorney, at (202) 504–2524, or Jeremy N. Rubenstein, Branch Chief, at (202) 272–3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Israel has filed an application on behalf of the Trusts in connection with its housing program for Soviet refugees to be financed by loans guaranteed by the United States. On May 25, 1990, the Dire Emergency Supplemental Appropriations Bill (Pub. L. 101–302) was enacted authorizing the Agency for International Development ("AID") to guaranty up to $400 million in loans to Israel for the purpose of providing housing and infrastructure in Israel for Soviet refugees.

2. AID and Israel have developed a program for directing and monitoring the use of the proceeds of the proposed financing. The terms of that program, and the method whereby AID will monitor the program, will be incorporated into an agreement between AID and Israel (the "Housing Program Agreement"). The proceeds of the loans will be used to support a program of subsidized mortgages for Soviet immigrants, to finance United States exports of merchandise or materials related to shelter or infrastructure, and for other shelter-related purposes approved by AID. The method and terms of the proposed financing are subject to AID's approval.

3. To implement the proposed financing, the Trusts will be formed as grantor trusts pursuant to a declaration of trust (the "Declaration of Trust"). The trustee of each Trust (the "Trustee") will be a major United States commercial bank having combined capital and surplus in excess of $100,000,000. Each Trust will hold a single promissory note evidencing a loan to Israel (a "Loan"). The entire proceeds of each Loan will be applied by Israel in accordance with the terms of the Housing Program Agreement. Timely payment of all principal and interest due on each Loan will be guaranteed by a full faith and credit of the United States (a "Guaranty").

4. Each Trust will issue a single class of non-redeemable certificates of beneficial interest (the "Certificates") through an underwritten public offering. Each Certificate will represent the right to receive a *pro rata* share of the payments of principal and interest on the Loan held by that Trust. Applicant believes that the offering of the Certificates is exempt from registration under the Securities Act of 1933 (the "1933 Act") by reason of section 3(a)(2) thereof. Applicant is seeking to obtain a no-action letter from the staff of the SEC stating that the staff will not recommend to the Commission any enforcement action if the offerings are not registered under the 1933 Act. If such an assurance is not obtained, the offerings will be registered under the 1933 Act.[1] If the Certificates are offered without registration, they will be offered pursuant to an offering circular containing appropriate disclosure of all material information concerning the Certificates, the Trusts, the Trustee, and Federal and state tax consequences.

5. The Loans will be unconditional general obligations of Israel. No action or failure to act on the part of the Trustee will affect Israel's obligation to make payments on the Loans. Similarly, each Guaranty will be a full, unconditional and irrevocable guaranty of payment on the relevant Loan. No action or failure to act on the part of Israel or the Trustee, including the bankruptcy of the Trustee, will affect AID's obligations under the Guaranties.

6. Each Loan will be in substantially the same form, having a fixed term and

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[1] Israel also is seeking assurance that the Divisions of Corporation Finance and Market Regulation will not recommend enforcement action if the certificates are offered without qualification of an indenture under the Trust Indenture Act of 1939, and if the Trusts do not register under the Securities Exchange Act of 1934. The manner in which the Trusts comply with these statutes will depend on the responses of the SEC staff.

a fixed interest rate, but each will have its own principal amount, amortization schedule, maturity, and interest rate.

7. The required payments in the transaction will be structured to ensure that the scheduled payments of principal and interest on the Loans will be sufficient to pay when due all amounts owing to Certificateholders. The interest rates on the Loans will be slightly higher than the interest rates on the related Certificates. As a result, the scheduled Loan payments to the Trust will exceed the payment owing on the related Certificates by an amount adequate to pay all ongoing fees and expenses of the Trustee and its authorized agents (including its auditors and legal counsel) as well as the annual fee payable to AID as compensation for its Guaranty. This amount will be fixed in advance of the offering and disclosed in the offering circular.

8. The Loans and related Guaranties will be held through the Trusts primarily because Israel and its financial advisors believe that this structure will enable Israel to obtain the lowest-cost source of funds while complying with the Foreign Assistance Act requirement that only "eligible investors" (generally defined to mean United States citizens and entities controlled by United States citizens) may have the benefit of the AID guaranty. Since the Trusts will qualify as "eligible investors," the trust structure provides assurance to the Certificateholders that the payments due them are fully supported by the Guaranties, without regard to the "eligible investor" status of any Certificateholder. By utilizing the Trusts, applicant believes that the widest potential universe of buyers of Certificates will be created, resulting in the lowest possible pricing for the offering.

9. The duties of the Trustee will be substantially ministerial in nature. The Trustee will establish a separate, non-interest bearing trust account for each Trust, to be maintained by the Trustee in its trust capacity. The Trustee will immediately deposit all payments it receives on the related Loan or Guaranty in the appropriate trust account. Securities and funds held by the Trustee in its trust capacity will be the property of the Trusts and not a part of the Trustee's estate in the event of the bankruptcy of the Trustee.

10. The Declaration of Trust will prohibit each Trust from engaging in any business other than the holding of a Loan and its Guaranty, the issuance of Certificates as described in this notice, and related activities. The Trusts may not issue any securities other than the Certificates and will be prohibited from borrowing money. In addition, the Trustee will have no authority to modify the right to receive payments on the Certificates or to take any action that would reduce the interest rate or principal amount of any Loan, or the obligations of AID under any Guaranty.

11. The Trustee will not be permitted to acquire any assets in substitution for the Loans and the Loans will not be subject to prepayment by Israel, except pursuant to Israel's right of defeasance, as described below. The Loans will not be transferable, assignable, or negotiable, except to a successor Trustee in accordance with the provisions of the Declaration of Trust.

12. Israel will be required to make payments to the Trusts on the Loans several days before each due date for the corresponding payments by the Trusts to their Certificateholders. This arrangement is designed to provide that, in the event of a default by Israel, the Trustee has sufficient time to demand and collect payments from AID in time to make the scheduled payments to the Certificateholders. If Israel fails to make timely payment of any amount due on a Loan, the Trustee will be required, without any action or demand by the Certificateholders, to demand payment from AID under the relevant Guaranty of all amounts then due under the Loan. In the unlikely event that AID does not make full payment under the relevant Guaranty upon demand, the Trustee will be obligated to take further actions to enforce the Guaranty if so instructed by the majority in interest of the holders of Certificates under a Trust. The Trustee will have no right to accelerate the Loan (or the related Certificates) and, in the case of continuing payment default, will be required to enforce the rights of the Trust under the Guaranty after each payment default.

13. To the extent that payments are made by Israel (or AID in the event of payment under its Guaranty) prior to distributions to Certificateholders, such payments may be temporarily invested by the Trustee in obligations issued or guaranteed by the United States government or any agency or instrumentality thereof and backed by the full faith and credit of the United States. The proceeds of such reinvestment, if any, would not be necessary to cover the required distribution to Certificateholders, the fees of the Trustee or its agents, or the annual Guaranty fees. Any such proceeds received by the Trusts will be remitted to Israel, assuming all amounts then due on the Loans have been paid in full. This limited activity will be disclosed in the offering circular.

14. The Trustee may resign for good cause only, and no resignation will be effective until a qualified successor Trustee has been designated by Israel and has accepted the Trusteeship. If no successor Trustee has been appointed within 30 days after the resigning Trustee has given notice of resignation, the resigning Trustee or any bona fide Certificateholder may petition any court of competent jurisdiction for the appointment of a successor Trustee.

15. Israel, Certificateholders holding 25 percent or more of the aggregate principal amount of the outstanding Certificates of a Trust, or a court of competent jurisdiction upon the request of any Certificateholder, may remove the Trustee if the Trustee ceases to be eligible to continue under the terms of the Declaration of Trust, or if the Trustee becomes insolvent. In addition, the Declaration of Trust will provide that any Certificateholder may petition a court of competent jurisdiction for the replacement of the Trustee if the Trustee demonstrates that it is unwilling to fulfill its duties. In the event of a removal of the Trustee, a successor Trustee will be appointed in the same manner as described above in connection with the resignation of a Trustee.

16. Subject to certain conditions, Israel may discharge its obligations with respect to any Loan (a "defeasance"), in whole but not in part, by depositing with the Trustee United States Government issued or guaranteed securities backed by the full faith and credit of the United States which, in the written opinion of a nationally recognized firm of independent certified public accountants, are sufficient to pay and discharge each installment of principal and interest on such Loan on the maturity of such installment without any need to reinvest the proceeds of such deposited securities. To the extent that the proceeds of any such deposited securities in excess of those used to discharge such installments were available, such excess would be remitted to applicant. In the event of a defeasance, the Guaranty issued in respect thereof would terminate, but the Certificates would remain outstanding and would thereafter represent interests in the assets deposited by Israel

Applicant's Legal Conclusions

1. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction, or any

class or classes of persons, securities, or transactions, from the provisions of the Act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 6(e) provides that if, in connection with any order exempting any investment company from any provision of section 7, the Commission deems it necessary or appropriate in the public interest or for the protection of investors that certain specified provisions of the Act pertaining to registered investment companies be applicable in respect of such company, the specified provisions shall apply to such company and to other persons in their transactions and relations with such company as if the company were a registered investment company.

2. Applicant seeks an order under sections 6(c) and 6(e) exempting the Trusts from all provisions of the Act other than sections 26 (except to the extent described below), 36, 37, and (to the extent necessary to implement the above sections of the Act) 38 through 53.

3. Although the Trusts will not issue redeemable securities, as defined in section 2(a)(32) of the Act, the Trusts will be subject to section 26 as if they were unit investment trusts. However, applicant seeks an exemption from the provisions of sections 26(a)(2) and 26(b) of the Act to the extent necessary to permit (a) Payment of Trustee's fees and expenses as a fixed percentage of the interest payable on the Loans (which will result in higher fees at the beginning of the Loan term than at the end), (b) the distribution to Israel of income earned as a result of the temporary reinvestment of payments by Israel to a Trust during the period prior to the scheduled payments by the Trust to Certificateholders, (c) the payment of the Guaranty fees to AID, and (d) defeasance by Israel of its payment obligations under one or more of the Loans. Applicant argues that these exemptions are fair and reasonable in light of the overall structure of the proposed transaction.

4. Applicant asserts that the requested order is necessary or appropriate in the public interest. Congress specifically authorized the $400 million in AID guaranties which are the foundation of the proposed transaction. The trust structure permits Israel to maximize the benefit of AID's housing loan guaranties and minimize the United States' exposure on the Guaranties. The liquidity created by the trust structure further advances the goals of the United States by increasing the number of potential investors, thereby helping to ensure that the entire offering will be placed and that the maximum amount permitted by Congress will be available for the Israel housing program for Soviet refugees.

5. Applicant asserts that the requested order is consistent with the protection of investors. The full faith and credit guaranty of the United States attached to each Loan will ensure that the Certificates will have very little investment risk. The transaction will be structured as a pass-through of payments to the Trusts to the Certificateholders. Payments to the Trusts will be sufficient to make timely payments due Certificateholders without any need for reinvestment. Applicant believes that the Certificates will be viewed by the market as the equivalent of United States guaranteed securities. Regulation of the Trusts under the Act would add administrative burdens and expense to the transaction without adding substantive protections to investors.

6. Applicants assert that the requested order is consistent with the purposes fairly intended by the policy and provisions of the Act. The Trusts' structure and proposed operations do not lend themselves to the abuses against which the Act was directed. The Trusts will have a simple capital structure; the Certificates will be the only class of securities that may be issued and a single United States guaranteed note is the only material asset that the Trusts will hold, except in the limited event of defeasance. The Trusts will have no authority to borrow funds or engage in any other activity. Concerns about unfair insider loans or any affiliated party transactions are not applicable to the proposed transaction. No Trust will enter into an investment advisory agreement, establish a board of directors, or face any liquidity issues, and there will be no ongoing management activity with respect to the Trusts' assets, except in the limited respects described above.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-6745 Filed 3-18-91; 1:21 pm]

BILLING CODE 8010-01-M

[Release No. 34-28971; File No. SR-NYSE-90-31]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Rules Governing Equity Specialists' Transactions in Listed Options

I. Introduction

On June 25, 1990, the New York Stock Exchange, Inc. ("NYSE") submitted to the Securities and Exchange Commission ("SEC" or "Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b-4 thereunder,[2] a proposed rule change to liberalize Exchange Rule 105 governing the trading by equity specialists in options overlying their speciality stocks. Specifically, the proposed rule change would provide equity specialists greater flexibility in the use of various options hedging strategies.[3]

The proposed rule change was published for comment in Securities Exchange Act Release No. 28260 (July 24, 1990), 55 FR 31268. No comments were received on the proposed rule change.

II. Background

In 1935, at the request of the Commission, all national securities exchanges adopted rules that prohibited any specialist from acquiring, holding or granting any interest in an option on his specialty stocks. Adoption of these prohibitions against equity specialists' transactions in listed options was a result of certain abuses associated with options granted to specialists and other floor traders. These abuses consisted of the formation of "pools" by specialists and others for the purpose of manipulating the specialists' speciality stocks. The use of options by specialists with respect to their speciality stocks was found to be the thrust of many of these manipulative options.[4]

In 1976, however, the Commission approved proposals by several regional stock exchanges to allow stock specialists on these exchanges to take positions—not limited to hedging positions—in listed options on their

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1989).

[3] In 1985, the Commission aproved the current version of rule 105. See Securities Exchange Act Release No. 21710 (February 4, 1985), 50 FR 5708 ("Rule 105 Approval Order").

[4] Congress provided the Commission with plenary authority to regulate exchange options trading under sections 9(b) and (c) of the Act. For complete description of the abuses that led to the prohibition against specialists' and other floor professionals' use of options, see S. Rep. No. 1455, 73rd Cong., 2 Sess. (1934) ("Pecora Commission Report").

specialty stocks.[5] In approving these proposals, the Commission stated that each regional exchange's market share was so small that regional exchange specialists' information advantages or manipulative abilities appeared relatively insignificant.

In 1985, the Commission approved the current version of NYSE Rule 105, which, as described in detail below, permits the use by NYSE specialists of options on their specialty stocks subject to certain limitations and restrictions.[6] In light of the fact that the NYSE was the primary market for substantially all of its stocks, the Commission, in approving the current version of rule 105, cautiously balanced the regulatory concerns regarding possible stock/option manipulation and the specialists' perceived information advantages against the benefits to the market to be derived from the Rule, namely enhanced market depth and liquidity. After performing this analysis, the Commission determined that the use of options by NYSE specialists would result in substantial benefits to the markets for these stocks as well as the options markets, and, taking into consideration the NYSE's surveillance plan and limitations imposed by the Rule, the benefits of the Rule outweighed the regulatory concerns raised by the Rule.

In addition, when approving the current version of rule 105, the Commission stated that it "would be prepared to reconsider [the design of the Rule] if evidence suggests that relation of certain of the NYSE's proposed restrictions was appropriate." [7] Based on the small number of specialists units who have engaged in option hedging,[8] the Exchange believes the cautious approach taken by the Commission and the Exchange with respect to specialist option hedging apparently has proven to be unduly restrictive. Accordingly, the NYSE had filed the present proposal to relax and expand certain provisions of rule 105 in an effort to broaden the use of options by NYSE equity specialists so that the market benefits originally contemplated when the Rule was aproved can be more fully realized.

III. Description of the Proposal

NYSE rule 105 currently allows a specialist to acquire and hold, in his specialist trading account, a position in listed options [9] on any of his specialty stocks "where appropriate * * * to offset the risk of making a market in the underlying stock." Under the Rule, a specialist may not establish and maintain an options position which is excessive either in terms of his or her existing position in the underlying specialty stock or in terms of a reasonable estimate of potential losses that may be incurred in relation to any such equity position.

The Rule also provides that any such options transactions must be made in accordance with the "Guidelines for Specialists' Specialty Stock Option Transactions Pursuant to Rule 105" ("Guidelines"). The Guidelines reiterate the restrictions contained in Rule 105 and provide guidance on the application of the Rule. Specifically, the Guidelines require that an options opening transaction by a specialist: (1) Result in an options position "entirely on the opposite side of the market from the underlying specialty stock position;" [10] (2) be established "solely to offset the risk of making a market in the underlying specialty stock position;" and (3) result in an options position that does not exceed the number of contracts permitted by specified "hedge ratios." [11]

The Guidelines to Rule 105 set forth the permissible options positions that a specialist may establish and maintain for the purpose of hedging risks associated with holding specialty stocks. A specialist is deemed to be in violation of existing Rule 105 if any of the following three events occur: (1) He establishes an options position in excess of permitted "hedge ratios;" (2) he fails to make a timely liquidation of an options position when required; or (3) regardless of compliance with the Guidelines, he has engaged in options transactions for manipulative or other purposes not related to offsetting the risk of making a market in the underlying specialty stock. To uphold the timely liquidation requirement, the specialist must: (1) Liquidate his excess options position within two hours if the stock position decreases by more than 25% and results in an offsetting options position that exceeds the hedge ratios but is on the opposite side of the market from the stock position; or (2) liquidate the excess options position within one hour if the options position becomes on the same side of the market as the stock position. The Rule 105 Guidelines do, however, provide for a *de minimis* exception to the liquidation requirements for 10 or fewer options contracts.

In the current filing, the NYSE proposes to amend its Rule 105 to provide specialists with greater flexibility in using options by allowing them to use any legitimate options hedging strategy to offset risk, as long as the resulting net option position is on the opposite side of the market from the underlying stock position. In addition, the proposal will allow specialists the choice of using either (1) Fixed hedge ratios,[12] (2) "dynamic deltas" [13] or (3) any other legitimate hedging strategy approved by the Exchange, to determine the number of permitted options contracts for the purpose of hedging the specialist's existing specialty stock position.

The proposed amendments to rule 105 retain the liquidation requirements for options positions that become overhedged or where the net option position becomes on the same side of the market as the underlying stock position.[14] The proposal, however, would change the time frame for liquidation. For a net option position which becomes overhedged by a change in the specialist's stock position of at least 25%, and remains on the opposite side of the market from the underlying stock position, the specialist would be required to enter a liquidation order by the close of trading on the day after the position becomes overhedged. For a net option position which becomes on the same side of the market as the underlying stock position, the liquidation order must be entered by the close of trading on the same day. The *de minimis* exception to the liquidation requirements would be expanded to include options contracts which offset

[5] See *e.g.*, Securities Exchange Act Release No. 13018 (November 30, 1976), 41 FR 53383 (order approving proposal by the Philadelphia Stock Exchange, Inc.).

[6] See rule 105 Approval Order, *supra* note 3.

[7] *Id.* 50 FR 5714.

[8] Currently, only one specialist unit is periodically using stock options to hedge its specialty stock positions.

[9] A listed option is an option issued by the Options Clearing Corporation ("OCC") and traded on a national securities exchange.

[10] Therefore, a specialist may purchase puts or sell calls if he is long the underlying specialty stock, and may purchase calls or sell puts if he is short the underlying specialty stock. Gains or losses in "opposite-side" options positions will offset or hedge, in whole or in part, gains or losses in the stock position being offset. In contrast, gains or losses in "same-side" options positions amplify the effects of gains or losses in the underlying stock. Therefore, the rule as currently in place forbids the establishment of spreads, straddles or similar combination options positions.

[11] The "hedge ratios" are 1 to 1 in the case of "in-the-money" options, 1.5 to 1 in the case of "at-the-money" options and 2 to 1 for "out-of-the-money" options. Accordingly, for each 100-share stock position, the corresponding number of option contracts that can be acquired depends on whether such option is "in-the-money," "at-the-money" or "out-of-the-money."

[12] *See supra* note 11.

[13] A delta is the amount by which an option's price will change for a corresponding change in price by the underlying security. The Exchange will select a pricing model to determine the appropriate delta for each option series.

[14] See *supra* note 12.

the equivalent of 5,000 shares of a specialty stock position.

The proposal would further facilitate "calendar rollovers" [15] by permitting a specialist to establish and hold an overhedged position (both near term and more distant term options) for a limited period of time (until the close of trading on the next trading day after the position in the far-out series is established) in order to effectuate a calendar rollover. This will provide a specialist with added flexibility while executing a rollover and remove the risk of becoming "unhedged" should there be a temporary absence of liquidity in the options market as the specialist seeks to liquidate one options position and establish another.

In addition, the proposal would permit a specialist to establish a long-term options position, irrespective of his actual stock position when the long-term options position is established, provided that he uses "out-of-the-money" options that are not near term and provided that the strategy is intended to offset general market making risk. Prior approval from the Exchange would be required before a specialist could engage in such a strategy. The specialist also would be exempted from liquidation requirements as to this options position. If the specialist were to deviate from the approved strategy, he would no longer be exempt from the liquidation provisions.

IV. Discussion

As described below, the Commission finds that the NYSE proposal is designed "to prevent fraudulent and manipulative acts and practices" and, in general, "to prevent investors and the public interest," and, therefore, is consistent with the requirements of the Act applicable to a national securities exchange, and, in particular, section 6(b)(5).[16] In determining whether to approve the amendments to rule 105 in 1985, the Commission weighted the potential benefits of the Rule against possible regulatory concerns, namely increased opportunity for stock/option manipulation or exploitation by specialists of their informational advantages. The Commission found that the use by NYSE equity specialists of options on their specialty stocks "will offer substantial benefits to the markets for these stocks and possibly to the markets for the options themselves."[17] The Commission also found that, taking into consideration the NYSE's surveillance plans, the proposal adequately addressed possible regulatory concerns. After analyzing the rule change now being proposed, the Commission again concludes that the benefits to be derived from the Rule, as modified, outweight any regulatory concerns.

Rule 105 as revised will provide specialists greater flexibility in using listed options as a hedge in order to offset market-making risk. Accordingly, the Commission finds that the proposal has the potential to enable specialists to add to overall stock market liquidity and depty by taking specialty stock positions they might not otherwise assume or by reducing risks on positions they are required to assume. This, in turn, could contribute to greater overall depth and liquidity in the options markets.

In this regard, the proposal is consistent with studies of market performance that have been issued since the October 1987 market break.[18] In view of the market environment of the past several years which has been subject to periodic outbursts of extreme one-day market volatility, it is important that specialists have the ability to offset their risks in an effective and effective manner. Due to the increase volatility of the market, substantial demands are placed on specialists from time to time to act as dealers to cushion sharp intra-day fluctuations in supply and demand in order to maintain fair and orderly markets in their specialty stocks. The proposed modification of certain provisions in NYSE rule 105 regarding specialists options hedging should enable specialists to hedge their market making activities more efficiently, and allow specialists to commit more market making capital during periods of market stress.

In addition, the proposal rule change is a reasonable response to suggestions made by the NYSE's Market Volatility and Investor Confidence Panel. The Panel, headed by former General Motors Chairman Roger Smith and composed of individuals from major U.S. corporations, the securities and futures industries, and the academic community, recently recommended that:

> Proposals to increase liquidity be considered by the NYSE, as well as other markets where equities and equity derivatives are traded. One promising idea is to enhance the ability of specialists at the NYSE to provide liquidity to the market by encouraging them to hedge their prositions using options in individual stocks. *Such hedges are made virtually impossible by current rules, which the Panel recommends relaxing, if adequate safeguards are in place to protect against frontrunning and manipulation."*[19] *(Emphasis added)*

While salutary in these respects, the proposed modification of options hedging restrictions does present concerns about the increased potential for specialists to engage in intermarket abuses. First, the Commission is concerned that greater flexibility in the use of listed options on specialty stocks could be abused for "mini-manipulation" [20] and other stock/option manipulation purposes. Second, the Commission is concerned that NYSE specialists may be able to use options to exploit their "informational advantages" in the underlying stock market. Because the NYSE specialist acts as the focal point of the market in most listed stocks, he has access to information regarding orders in his limit order book and interest in the crowd.[21] Moreover, his central position often dictates that he is consulted by off-floor participants prior to their execution of large traders.[22]

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[15] A "calendar rollover" is a method whereby a market participant with an options position that is about to expire replaces it with a position in a farther out series.

[16] 15 U.S.C. 78f(b)(5) (1982).

[17] Rule 105 Approval Order, *supra* note 3, 50 FR at 5714.

[18] Report of the Presidential Task Force on Market Mechanisms at 49–50, Study VI at 39–47 (January 8, 1988) ("Brady Report"); Division of Market Regulation, The October 1987 Market Break at 4–1 to 4–29 (February 1988) ("Market Break Report"); NYSE, Report on Market Volatility and Investor Confidence at 6, appendix D at 6–7 (June 7, 1990) ("NYSE Report"); Division of Market Regulation, Market Analysis of October 13 and 16, 1989 at 16–26, 33–34 (December 1990).

[19] *NYSE Report, supra,* note 18, at 6.

[20] A mini-manipulation involves an effort by a trader over a short period of time to move the price of a stock to benefit a previously established options position. Once the price of the stock has moved up or down, the trader seeks to liquidate the options position at a profit.

[21] The Commission recently approved a rule change (SR–NYSE–90–33) submitted by the NYSE that will eliminate a specialist's exclusive access to orders in the limit order book. Specifically, pursuant to the rule change, termed "Look-at-the-Book," the Exchange will make available to securities information vendors and "self-vending" member organizations and other financial institutions, a specified portion of the limit orders for securities included in the Exchange's Display Books. This Look-at-the-Book information would be available three times during the trading day and include eight prices around the current market with total buy/sell limit order quantities for 50 securities. The Commission, in approving the Look-at-the-Book proposal, concluded that making limit order information available to brokers, dealers and investors, furthers the principles of sections 6(b)(5) and 11A of the Act by broadening the public dissemination of market information. See, Securities Exchange Act Release No. 28915 (February 25, 1991) (order approving File No. SR–NYSE–90–33). Therefore, the perceived information advantages possessed by NYSE specialists should dwindle as a result of the Look-at-the-Book's widespread dissemination of limit orders.

[22] NYSE rule 127(a) states that a block positioner should consult with a specialist to ascertain the

Continued

Accordingly, it is conceivable that a specialist could be motivated to engage in options transactions for purposes unrelated to the offsetting of market-making risk to capitalize on informational advantages.

The Commission, as it did in the original specialist options hedging order, however, concludes that the NYSE proposal to amend Rule 105 appropriately addresses these concerns. Considering the proposed rule change as a whole, the specialists' ability to use options for abusive purposes is unlikely as a result of the proposed rule 105 restrictions which limit an options hedging stratgegy to a net option position on the opposite side of the market from the specialty stock position and requires that all options trading activity be related to offsetting market making risk. Any gains in opposite side options positions should be offset by losses in the underlying stock. In addition, the Commission notes that the reporting and record keeping requirements of the Guidelines are left unchanged by the proposal.[23] Moreover, the proposal leaves intact a provision of the Guidelines specifically highlighting the prohibition against the frontrunning of blocks by specialists.[24] Finally, the NYSE has surveillance procedures in place that are designed to detect and deter stock/options manipulation.

The Commission believes that the specific modifications proposed by the NYSE—permitting NYSE specialists to use "dynamic delta" options hedging strategies, expanding the time frame for the liquidation of overhedged or same side options positions overlying the specialists specialty stock positions, raising the *de minimis* exception to the liquidation requirements and allowing an overhedged position to facilitate "calendar rollovers,"—are reasonable and appropriate means to encourage specialists to offset the risk of assuming dealer positions in specialty stocks through the use of limited options positions and strategies.

The NYSE proposal to enlarge specialists options hedging by authorizing various options strategies, such as "dynamic deltas," [25] as long as the net option position is on the opposite side of the market from the underlying stock position, is a more sophisticated and sound approach than fixed hedge ratios to provide specialists with adequate hedging capability. The use of dynamic deltas will enable specialists to hedge their positions more precisely and in line with options pricing theories.

The expansion of time frames for the liquidation of overhedged options posiitons or those options positions which become on the same side of the market as the underlying stock position reasonably addresses the practical problem the specialist encounters under the existing liquidation parameters of having to constantly adjust his options positions in response to changing stock positions. At the same time, the liquidation time frames are not so lengthy as to enable specialists to easily circumvent the requirement that the options positions only be used for hedging purposes.

By raising the *de minimis* exception to the liquidation requirements to include options contracts which offset the equivalent of 5,000 shares of a speciality stock position, the NYSE has sought to increase specialists' flexibility in unwinding options hedge positions after a change in the underlying specialty stock position. Increasing the *de minimis* exception of NYSE Rule 105 by a multiplier of five to 5,000 shares of a specialty stock position is warranted due to the greater share volume since 1985 [26] and the positions the specialist must hold as a result of escalating market volatility.[27] In addition, granting a larger *de minimis* exception will provide the specialist with the necessary flexibility to maintain a fair and orderly market in his underlying specialty stock. The existing exception for options contracts which offset the equivalent of 1,000 shares of a specialty stock position is too small in the context of market conditions characterized by extreme one-day volatility and intra-day price swings. It is more reasonable in constructing a *de minimis* exception to reflect the present market conditions to expand the exception to 50 options. This size is still small enough to prevent a specialist from acquiring a large, unhedged position in options.

The NYSE proposal would further permit specialists to establish and hold an overhedged position in both near term and more distant term options until the close of trading on the next trading day after a "calendar rollover" is concluded. The Commission finds this exception to the specialist hedging rules appropriate and reasonable in order to provide specialists with the flexibility to roll positions in a cost-efficient manner, while at the same time removing the risk of becoming "unhedged" during the execution of a rollover to a farther-out options series.

The final component of the NYSE proposal would permit a specialist, with prior Exchange approval, to establish a long-term options position using far-term "out-of-the-money" options. Based on this proposal, a long-term option position could be established regardless of the specialist's actual stock position, provided the strategy is intended to offset general market making risk. For a number of reasons, the Commission believes this proposal by the Exchange is a reasonable alternative to allow specialists to hedge their market making risks through the purchase of options, while not presenting additional opportunities for a specialist to take advantage of any informational benefit or engage in stock/option manipulation. First, Exchange approval in order to establish the long-term options position is required, so that the specialist must present, and have the exchange concur to, the specific hedging technique he intends to use. Moreover, the exchange would be able to surveil whether the specialist deviated from the specific strategy. Second, information with respect to short term market movements would tend not to benefit the specialist establishing a long-term "out-of-the-money" option position. The deltas for these options are usually low, so that a

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extent of interest the specialist may have in participating in such a block transaction at the indicated price or prices, unless professional judgment dictates against it. As a result, off-floor participants, such as block positioners, routinely consult with specialists regarding the execution of their trades.

[23] A specialist is required under Rule 105 to report all accounts in which he has an interest and in which are effected options transactions in any of his specialty stocks. The reporting of options transactions by each specialist is also mandated by the Exchange. In addition, specialists are required to establish a separate "memo" account to track options positions relating to a specialist's account. The underlying specialty stock position is also recorded in this "memo" account.

[24] *See* Securities Exchange Act Release No. 25233 (December 30, 1987), 53 FR 296 (SR–AMEX–87–28; SR–CBOE–87–52; SR–NYSE–87–36; SR–PSE–87–26; SR–PHLX–87–29; and SR–NASD–87–45).

[25] A dynamic delta strategy involves constantly changing the mix of options used to hedge stock positions. This strategy is one of several dynamic hedging strategies which requires rebalancing a market portfolio to increase or decrease with the proportion of equity exposure depending on market movements. Frequent adjustments of the hedge over time and changes in the value of the portfolio are facilitated through the relationship of the option price and underlying stock exhibited in a "delta." *See, supra,* at note 13.

[26] NYSE fact books indicate that average daily share volume for the years 1985–1990 was as follows:

1985—109.2 million shares
1986—141.0 million shares
1987—188.9 million shares
1988—161.5 million shares
1989—165.5 million shares
1990—156.8 million shares

[27] Currently, NYSE Rule 105 provides a *de minimis* exception to the liquidation requirements as to an option position of 10 or fewer contracts, which generally would offset the equivalent of 1,000 shares of an underlying specialty stock.

one point move in the stock would result in a much smaller move in the options. Third, the use of an Exchange-approved, long-term options strategy would have to be strictly for hedging purposes to offset market-making risk. Accordingly, the Commission finds that the use of long term "out-of-the-money" options to offset market-making risk without liquidation time frames is an acceptable alternative hedging strategy for specialists.

In conclusion, the Commission finds that the use by NYSE specialists of expanded options hedging on their specialty stocks as proposed by the NYSE will offer substantial benefits to the markets for these stocks. The Commission further finds that the proposal adequately addresses the regulatory concerns of stock/option manipulation and specialist informational advantages. In sum, the benefits of the proposal outweigh any regulatory concerns raised by an expanded use of specialist options hedging.

It therefore is ordered, pursuant to section 19(b)(2) of the Act,[28] that the proposed rule change (SR–NYSE–90–31) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[29]

Dated: March 13, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–6604 Filed 3–19–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–28970; File No. SR–PSE–91–6]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to Trading in Equity Joint Accounts and Options Joint Accounts

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 19, 1991, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items, I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to amend Exchange rules 4.10(a) and 4.10(b), relating to trading in equity joint accounts; and Exchange rule 6.39(c),[1] relating to trading in options joint accounts, of the Rules of the Board of Governors.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning, the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Section A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Rule 4.10.

PSE rule 4.10(a), entitled *Joint Accounts,* currently provides that a specialist must obtain prior Exchange approval before initiating a purchase or sale of a security admitted on the Exchange for any account in which the specialist, the specialist's firm or a participant in the specialist's firm has a direct or indirect interest. As currently written, the provisions of this Rule do not apply to any purchase or sale (1) By any member for any joint account where the joint account is maintained solely for bona fide domestic or foreign arbitrage transactions; or (2) by a specialist for a joint account, where the specialist is expressly permitted by rule 4 to have an interest in the joint account.

The PSE proposes to reword rule 4.10(a) to make the language of the Rule clearer. The change in the language of Rule 4.10(a) is intended as a clarification only and does not purport to change the meaning or purpose of the Rule.

PSE rule 4.10(b), entitled *Joint Account Reports,* currently requires the specialist to furnish the Exchange with weekly reports with respect to each joint account held for buying and selling securities. The reports must be on a form prescribed by the Exchange. Rule 4.10(b), however, does not specify any procedures for obtaining prior Exchange approval for the transaction listed, nor procedures for establishing a joint account.

The Exchange believes it is desirable to formalize the procedures under which it currently operates both for approving transactions and for setting up a joint account. The PSE proposes, therefore, to amend rule 4.10(b) to set out detailed procedures to eliminate confusion and inconsistencies when dealing with joint account applications. The proposed procedures reflect those of the American ("Amex"), New York ("NYSE"), and Boston Stock Exchange.[3]

Market Maker Joint Accounts

Currently, PSE rule 6.39(c), Commentary .03, requires that a participant in a market maker's joint account be either a market maker or the clearing organization that clears the joint account.[4] Market makers may represent their member organizations in the joint account.

The proposed amendment to Commentary .03 to Rule 6.39(c) would allow member organizations, in addition to market makers, to participate in a joint account. Accordingly, non-clearing member organizations would be eligible for participation in the joint account. At the PSE, member organizations can be represented by equity floor members, options floor members, or office members.[5]

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[28] 15 U.S.C. 78s(b)(2) (1982).

[29] 15 CFR 200.30–3(a)(12) (1989).

[1] The original rule filing stated that the PSE proposed to amend Exchange rule 6.41(a). A subsequent letter clarifies that the PSE proposes to amend rule 6.39(c), entitled *Joint Accounts,* and thus all references in the original filing to rule 6.41(a) are replaced with references to rule 6.39(c). See letter from Rosemary A. MacGuinness, Senior Counsel, PSE, to Elizabeth Pucciarelli, Attorney, Branch of Exchange Regulation, Division of Market Regulation, dated February 26, 1991.

[2] The exact text of the proposal was attached to the rule filing as Exhibits A and B and is available at the PSE and the Commission at the address noted in Item IV below.

[3] *See, e.g.,* Amex rule 363; NYSE rule 93.91.

[4] File No. SR–PSE–89–31 amended rule VI, section 81 by moving the text of section 81(c) to rule VI, section 90(a). *See* Securities Exchange Act Release No. 27553 (December 20, 1989), 54 FR 53409. In a subsequent rule filing (SR–PSE–90–6), the PSE renumbered its rules. Under the new reference structure, rule VI, section 90 became rule 6.39(c). See Securities Exchange Act Release No. 27787 (March 8, 1990), 55 FR 9817.

[5] The PSE also proposes to amend Commentary .04 to rule 6.39(c), which currently requires each participant in a joint account to file with the Membership Services Department and thereafter keep current a completed application. The PSE proposes a modification to this Commentary which would provide that disclosure under this rule must be in conformity with the requirements of rule 4.10.

The proposed change was received by Exchange staff and the Exchange's Options Floor Trading and Membership Committees. It was concluded that there was not sufficient reason to prohibit non-clearing member firms from participating in joint accounts, as long as the account was guaranteed by a member clearing firm and approved by the Exchange. Under the amendment, the member organization would contribute capital to a joint account with market markers, and share in the profit and loss from that account. The member organization would not have options floor representation and would not send in firm orders for execution by the joint account.

The proposed rule change is consistent with section 6(b)(5) of the Act in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearning, settling, processing information with respect to, and facilitating transactions in securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The proposed change to rule 6.39(c) was reviewed and approved by the Exchange's Options Floor Trading and Membership Committees.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing with also be available for inspection and copying at the principal office of the PSE. All submission should refer to File No. SR–PSE–91–6 and should be submitted by April 9, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 13, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–6603 Filed 3–19; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18041; 811–3924]

Colonial Corporate Cash Trust II; Application for Deregistration

March 13, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Colonial Corporate Cash Trust II.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N–8F was filed on March 1, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 9, 1991 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicant, One Financial Center, Boston, MA 02111.

FOR FURTHER INFORMATION CONTACT: Kimberly Warren, Staff Attorney, at (202) 272–3026, or Jeremy Rubenstein, Branch Chief, at (202) 272–3023 (Division of Investment Management, Office of Investiment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations:

1. Applicant is a Massachusetts business trust and an open-end diversified management investment company registered under the Act. On December 13, 1983, applicant filed a notification of registration on Form N-8A pursuant to section 8(a) of the Act. On the same date, applicant filed a registration statement under the Act and under the Securities Act of 1933. Applicant filed an amendment to its registration statement on January 31, 1984. The registration statement became effective on February 21, 1984. Applicant's initial public offering commenced immediately thereafter.

2. On August 3, 1990, the board of trustees of applicant unanimously approved the terms of an agreement and plan of reorganization (the "Agreement") between applicant and Colonial Corporate Cash Trust I ("Colonial I"); authorized the preparation and filing of proxy materials relating to a proposed reorganization of the two funds; and authorized a special meeting of applicant's shareholders to vote on the proposed Agreement. The Agreement provided that applicant would transfer all of its assets to Colonial I in exchange for shares of Colonial I having an aggregate net asset value equal to the net value of the transferred assets. Colonial I filed a registration statement on Form N–14, including a prospectus/proxy statement, with the Commission (File No. 811–3418) on August 20, 1990. Definitive copies of the prospectus/proxy statement, dated September 18, 1990, were distributed to applicant's shareholders with reference to a special meeting of shareholders to be held on November 23, 1990 to consider the Agreement. A reminder

letter and duplicate proxy cards were mailed to applicant's shareholders on or about November 1, 1990. At a special meeting, applicant's shareholders approved the Agreement on November 23, 1990.

3. As of November 30, 1990, applicant had 1,613,790,604 shares outstanding. As of the same date, applicant had an aggregate net asset value of $62,041,099.90 or $38.44 per share.

4. On November 30, 1990, applicant transferred all of its assets to Colonial I in an exchange for shares of Colonial I having the same aggregate net asset value as the transferred assets. The shares were distributed on a pro rata basis to applicant's shareholders.

5. The expenses incurred in connection with the reorganization included fees and disbursements for legal, accounting, printing, and custodial services. Applicant assumed 75% of such expenses and Colonial I assumed 25% of such expenses (excluding certain state securities regulation fees that were paid by Colonial I).

6. As of the time of filing the application, applicant had no securityholders, assets, debts or other liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those related to its dissolution. Finally, applicant intends to file a Certificate of Dissolution with the appropriate authority in the State of Massachusetts upon receipt of an order under section 8(f) of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-6606 Filed 3-19-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18040; 811-4198]

The Insider Reports Fund; Deregistration

March 13, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: The Insider Reports Fund (the "Fund").

RELEVANT 1940 ACT SECTION: Section 8(f) and rule 8f-1 thereunder.

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on Form N8-F on October 23, 1990 and amended on March 11, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 8, 1991, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; on behalf of Applicants, 19 Rector Street, New York, New York 10006.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Staff Attorney, (202) 272-2511, or Max Berueffy, Branch Chief, (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. The Fund is a non-diversified, open-end management company organized as a business trust under the laws of the Commonwealth of Massachusetts. On December 31, 1984, the Fund registered under section 8(b) of the Act. On this same date, the Fund filed a registration statement pursuant to the Securities Act of 1933, registering an indefinite number of shares of beneficial interest. After subsequent amendments, the Fund's registration statement became effective and its initial public offering commenced on July 1, 1985.

2. On January 25, 1989, Furman, Anderson & Co. became the Fund's new investment adviser pursuant to an investment advisory contract approved by the Board of Trustees and shareholders of the Fund. As disclosed in the advisory contract, Furman, Anderson & Co. acted as the Fund's regular broker and was a major recipient of the Fund's brokerage commissions.

3. At meetings held on March 16 and April 30, 1990, the Board of Trustees of the Fund determined that due to a redemption request by the Fund's largest shareholder and the inability of the Fund to attract sufficient new investment, continued operation of the Fund would not be economically feasible. Accordingly, the Board of Trustees recommended liquidation of the Fund and the convening of a special meeting of shareholders regarding the liquidation (the "Special Meeting").

4. The Fund sent an Information Statement, as required by rule 14c-2 under the Securities Exchange Act of 1934, to shareholders notifying them of the Special Meeting to be held on July 5, 1990. At the Special Meeting a majority of shareholders voted in favor of the liquidation of the Fund.

5. The assets of the Fund, consisting of readily marketable securities, were sold through registered brokers in regular open-market transactions.

6. As of July 6, 1990 (the "Liquidation Date") the Fund had 30,333.801 shares outstanding. The aggregate net asset value, net of amounts reserved for expenses, as of the Liquidation Date was $279,528.52, and the net asset value per share was $9.22. On the Liquidation Date the Fund made distributions in cash pro rata to all shareholders outstanding.

7. All liquidation expenses were charged to the net asset value of the Fund prior to liquidation. The Fund had reserved $32,456 for the payment of the liquidation expenses including legal and auditor's fees, transfer agent and servicing fees, taxes, and other miscellaneous expenses. As of March 1, 1991 all of the reserves had been expended except for $2042.00, which amount is expected to pay certain remaining expenses.

8. As of the time of filing of this application, the Fund had no shareholders, assets, other than amounts reserved to pay expenses described in Item 5 above, or liabilities. The Fund is not a party to any litigation or administrative proceeding. The Fund is not engaged in any business activities other than those necessary for the winding up of its affairs. The Fund intends to file for dissolution under the laws of the Commonwealth of Massachusetts.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-6605 Filed 3-19-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC—18042; 811-3053]

Mutual of Omaha Cash Reserve Fund, Inc.; Application for Deregistration

March 13, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Mutual of Omaha Cash Reserve Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: The Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N–8F was filed on February 26, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving the Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 9, 1991 and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reasons for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 10235 Regency Circle, Omaha, Nebraska 68114.

FOR FURTHER INFORMATION CONTACT: Nicholas D. Thomas, Staff Attorney, at (202) 504–2263, or Max Berueffy, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. The Applicant was organized as a Nebraska corporation and is an open-end diversified management investment company registered under the Act. On April 28, 1980, the Applicant filed a notification of registration on Form N–8A pursuant to section 8(a) of the Act. On the same date, the Applicant filed a registration statement on Form N–1 under the Securities Act of 1933. The registration statement became effective on May 16, 1980, and the Applicant's initial public offering commenced on the same date or shortly thereafter.

2. At a meeting on November 26, 1990, the Applicant's board of directors adopted an agreement and plan of acquisition (the "Plan") under which the Applicant would be acquired by Mutual of Omaha Money Market Accounts, Inc. ("Account"), a registered open-end management investment company (File No. 811–2921).

3. On January 11, 1991, the Applicant mailed a notice of a special meeting, a proxy statement and a copy of the Plan to all shareholders of record as of January 2, 1991.

4. On February 21, 1991, at the special shareholder meeting, more than two-thirds of the total number of the Applicant's shares outstanding and entitled to vote as represented by proxy or in person, voted in favor of the Plan.

5. Pursuant to the Plan, on February 22, 1991, the Applicant transferred all of its assets and liabilities to Account in exchange for shares of Account having an aggregate net asset value equal to the aggregate net asset value of the Applicant's shares. On that day, the Applicant distributed the newly acquired Account shares *pro rata* to the Applicant's shareholders in complete liquidation of the Applicant.

6. The Applicant paid all expenses incurred in connection with the merger, including proxy solicitation, general administration and legal costs totaling $36,660. The Applicant's investment adviser, Mutual of Omaha Fund Management Company, paid approximately $1,100 to attach copies of Account's prospectus to Applicant's proxy materials.

7. As of the time of filing the application, the Applicant had no shareholders, assets or liabilities. The Applicant is not a party to any litigation or administrative proceeding. The Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–6607 Filed 3–19–91; 8:45 am]

BILLING CODE 8010–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–84]

Initiation of Section 302 Investigation and Request for Public Comment; Thailand Patent Protection

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of initiation of an investigation under section 302(a) of the Trade Act of 1974, as amended ("The Trade Act"); request for written comments.

SUMMARY: Pursuant to section 302(a) of the Trade Act, 19 U.S.C. 2412(a), the United States Trade Representative (USTR) has determined to initiate and investigation of the Royal Thai Government's policies and practices with respect to providing adequate and effective patent protection. USTA invites written comments on the matter being investigated.

EFFECTIVE DATES: This investigation was initiated on March 15, 1991. Written comments from interested persons are due April 19, 1991.

ADDRESSES: Office of the United States Trade Representative, room 223, 600 17th Street, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Peter Collins, Director for Southeast Asian and Indian Affairs, (202) 395–6813, or Catherine Field, Associate General Counsel, (202) 395–3432.

SUPPLEMENTARY INFORMATION: On January 30, 1991, the Pharmaceutical Manufacturers' Association (PMA) filed a petition under section 302(a) of the Trade Act, alleging that the Royal Thai Government denies adequate and effective patent protection for pharmaceutical products. Deficiencies in the current Thai patent law include lack of product patent protection for pharmaceuticals, a short term of protection, requirements to manufacture a product or use a process in Thailand, and excessively broad compulsory licensing provisions. The petition request that Thailand amend its patent law promptly to remedy these deficiencies. PMA also seeks transitional or "pipeline" protection for pharmaceutical products that have been patented in other countries but have not been marketed in Thailand.

PMA contends that the failure to provide adequate and effective patent protection for its members' products is unreasonable and constitutes a burden or restriction on U.S. commerce. A recent survey in Thailand reported that Thai pirates are currently manufacturing

eighty-nine copies of eight pharmaceutical compounds for which U.S.-based PMA member companies hold patents. The petition supplied information on specific products that have been copied and estimates of sales lost to these copies and the effect of low-priced copies on profits of U.S. firms and their Thai subsidiaries. Based on a study of some of the pharmaceutical products originated by U.S.-based PMA member companies, or by foreign producers with U.S. subsidiaries PMA estimatesd losses on these products of $12 million in 1988 and $16 million in 1989. Overall lost sales in Thailand to U.S.-based PMA members are estimated at $16 to $24 million in 1988.

Copies of the PMA petition are available for public inspection at the USTR Reading Room: room 101, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC. An appointment to review the docket (Docket No. 301–84) may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 10 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday.

INVESTIGATION AND CONSULTATIONS: On March 15, 1991, pursuant to section 302(a) of the Trade Act, the USTR initiated an investigation of the Thai government's acts, policies and practices related to providing adequate and effective patent protection. USTR also requested consultations with the Royal Thai Government, as required by section 303(a) of the Trade Act. USTR will seek information and advice from the petitioner and the appropriate representatives provided for under section 135 of the Trade Act in preparing the U.S. presentations for such consultations.

Within 12 months after the date on which this investigation was initiated (i.e., on or before March 15, 1992), pursuant to section 304 of the Trade Act the USTR must determine, on the basis of the investigation and the consultations, whether any act, policy, or practice described in section 301 of the Trade Act exists and, if that determination is affirmative, determine what action, if any, to take under section 301 of the Trade Act.

Public Comment

Interested persons are invited to submit written comments on the issues raised in the petition and on the determinations required under section 304 of the Trade Act. Comments must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b) (55 FR 20593) and are due by noon on Friday, April 19, 1991. Comments must be in English and provided in twenty copies to: Chairman, Section 301 Committee, room 223, USTR, 600 17th Street, NW., Washington, DC 20506.

Comments will be placed in a file (Docket 301–84) open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. (Confidential business information submitted in accordance with 15 CFR 2006.15 must be clearly marked "Business Confidential" in a contrasting color ink at the top of each page on each of 20 copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary shall be placed in the Docket which is open to public inspection.)

A. Jane Bradley,

Chairman, Section 301 Committee.

[FR Doc. 91–6626 Filed 3–19–91; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular Material: Restricted Category Rotorcraft; Issuance of Type Certificates; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting and request for comments; proposed advisory circular material.

SUMMARY: This notice announces the availability of proposed advisory circular material pertaining to type certification of restricted category rotorcraft. In conjunction with the release of this material for comment, this notice also announces that the FAA is sponsoring a public meeting to discuss several issues related to the topic of restricted category rotorcraft.

DATES: The meeting will begin at 9 a.m. on May 9, 1991.

Written comments on the proposed material must be received by June 21, 1991.

ADDRESSES: The meeting will be held at the Hyatt Regency Hotel, 122 North 2nd Street, Phoenix, Arizona 85004–9987, telephone (602) 252–1234 (headquarters hotel for the 47th Annual American Helicopter Society Forum).

Comments may be mailed to the FAA, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, or delivered to the FAA, Rotorcraft Standards Staff, 4400 Blue Mound Road, Building 3B, room 143N, Fort Worth, Texas. Comments received may also be inspected at this same location.

FOR FURTHER INFORMATION CONTACT: Mr. Ray Twa, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 624–5158 or fax (817) 624–5988.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed advisory circular material, and copies of the material have been mailed to all known affected industry and government entities, both foreign and domestic. Any interested person not receiving a copy of the proposed material may receive a copy by contacting the person named under "**FOR FURTHER INFORMATION CONTACT.**"

Background

The Rotorcraft Directorate is sponsoring this meeting to give the public an opportunity to discuss topics surrounding the issue of type certification of restricted category rotorcraft. Discussion will focus on the following items:

1. Restricted category certification of:

—Aircraft manufactured in countries with and without a bilateral airworthiness agreement with the United States.

—Military aircraft manufactured outside the United States.

—Newly produced aircraft operated by the U.S. military.

—Surplus aircraft formerly operated by the U.S. military.

2. Export of restricted category rotorcraft.

3. Overview of recent guidance on approval of restricted category agricultural spray/dispensing equipment.

Meeting Procedures

The meeting is being chaired by the Rotorcraft Directorate, and panel members will include FAA representatives from Flight Standards, Headquarters Engineering and Manufacturing Divisions, Legal Counsel, and the Office of International Aviation.

The following procedures will be used to facilitate the workings of the meeting.

1. Registration will be from 8–9 a.m. on May 9. There is no fee for participation. Preregistration is recommended and may be accomplished by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**"

2. The meeting will continue on May 10, if necessary, to complete discussion of all topics.

3. The meeting will be recorded by a court reporter, and transcripts will be available for purchase directly from the court reporter.

4. Statements made by the FAA will be made to facilitate discussion and should not be taken as expressing a final FAA position.

5. The FAA will consider all material presented at the meeting by participants. Handouts will be accepted at the discretion of the chairperson; however, enough copies should be provided for distribution to all participants.

Issued in Fort Worth, Texas, on March 7, 1991.

A.J. Merrill,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 91-6577 Filed 3-19-91; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

Highway Safety Programs; Amendment of Conforming Products List of Calibrating Units for Breath Alcohol Testers

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice.

SUMMARY: This notice amends the Conforming Products List for instruments which have been found to conform to the Model Specifications for Calibrating Units for Breath Alcohol Testing (49 FR 48865).

EFFECTIVE DATE: March 20, 1991.

FOR FURTHER INFORMATION CONTACT: Mrs. Robin Mayer, Office of Alcohol and State Programs, NTS-21, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590; Telephone: (202) 366-9825.

SUPPLEMENTARY INFORMATION: On August 19, 1975 (40 FR 36167), the National Highway Traffic Safety Administration (NHTSA) published the Standards for Calibrating Units for Breath Alcohol Testers. A Qualified Products List of Calibrating Units for Breath Alcohol Testers, of devices which met this standard, was first issued on November 30, 1976 (41 FR 53384).

On December 14, 1984 (49 FR 48864), NHTSA converted this standard to Model Specifications for Calibrating Units for Breath Alcohol Testers, and published in appendix B (49 FR 48872), a Conforming Products List (CPL) of calibrating units which were found to conform to the Model Specifications. Amendments to the CPL have been published in the **Federal Register** since that time.

Since the last publication of the CPL for calibrating units, the Guth Laboratories Model 34C calibration device has been tested and found to meet the requirements of the Model Specifications. This particular device, designated as the 34C-NPAS, is intended for use in the National Patent Analytical Systems Inc., BAC Datamaster evidential breath tester.

The Conforming Products List is therefore amended as follows:

Conforming Products List of Calibrating Units for Breath Alcohol Testers

(Manufacturer and Calibrating Unit)

1. Century Systems, Inc., Arkansas City, KA: Breath Alcohol Simulator BAS311.

2. CMI, Inc., Owensboro, KY: Toxitest II.

3. Federal Signal Corporation, CMI, Inc., Minturn, CO: Toxitest Model ABS 120.

4. Guth Laboratories, Inc., Harrisburg, PA: Model 34C Simulator; Model 34C Cal DOJ; Model 34C-FM; Model 34C-NPAS; and Model 10-4.

5. Intoximeters, Inc., St. Louis, MO: Nalco Breath Alcohol Standard.

6. Luckey Laboratories, Inc., San Bernardino, CA: Simulator.

7. Protection Devices, Inc., Dayton, NJ: LS34 Model 6100.

8. Smith & Wesson Electronic Co., Springfield, MA: Mark II-A Simulator.

9. Systems Innovation, Inc., Hallstead, PA: True-Test MD 901.

(23 U.S.C. 402; delegations of authority at 49 CFR 1.50 and 501)

Adele Derby,

Associate Administrator for Tariff Safety Programs.

[FR Doc. 91-6562 Filed 3-19-91; 8:45 am]

BILLING CODE 4910-59-M

Highway Safety Program; Amendment of Conforming Products List of Evidential Breath Testing Devices

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice.

SUMMARY: This notice amends the Conforming Products List for instruments which have been found to conform to the Model Specification for Evidential Breath Testing Devices (49 FR 48854) December 14, 1984.

EFFECTIVE DATE: December 14, 1984.

FOR FURTHER INFORMATION CONTACT: Mrs Robin Mayer, Office of Alcohol and State Programs, NTS-21, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590; telephone (202) 366-9825.

SUPPLEMENTARY INFORMATION: On November 5, 1973, the National Highway Traffic Safety Administration (NHTSA) published the Standards for Devices to Measure Breath Alcohol (38 FR 30459). A Qualified Products List of Evidential Breath Measurement Devices comprised of instruments that met this standard was first issued on November 21, 1974 (39 FR 41399).

On December 14, 1984 (49 FR 48854), NHTSA converted this standard to Model Specification for Evidential Breath Testing Devices, and published in appendix D to that notice (49 FR 48864), a Conforming Products List (CPL) of instruments that were found to conform to the Model Specifications. Amendments to the CPL have been published in the **Federal Register** since that time.

Since the last publication of the CPL, three (3) breath measurement devices have been tested and found to conform to the requirements of the Specifications for mobile and non-mobile evidential breath testers: CMI, Inc.'s SD-2; National Dreager, Inc.'s Alcotest 7410; and Plus 4 Engineering's Intoxilyzer 5000. Further, the National Patent Analytical Systems, Inc., BAC Datamaster equipped with a housing for an integrally connected Guth Laboratories 34C calibrating units was evaluated. This instrument has been designated as the 34C-NPAS. On the basis of the evaluation, it has been determined that the BAC Datamaster is essentially the same device as currently listed and is, therefore, considered to be already on the list.

The Conforming Products List is therefore amended as follows:

CONFORMING PRODUCTS LIST OF EVIDENTIAL BREATH MEASUREMENT DEVICES

Manufacturer and model	Mobile	Nonmobile
Alcohol Countermeasures System, Inc., Port Huron, MI:		
Alert J3AD	X	X
BAC Systems, Inc., Ontario, Canada:		
Breath Analysis Computer		X
CAMEC Ltd, North Shields, Tyne, and Ware, England:		
IR Breath Analyzer	X	X
CMI, Inc., Owensboro, KY:		
Intoxilyzer Model		
4011	X	X
4011A	X	X
4011AS	X	X
4011AS-A	X	X
4011AS-AQ	X	X
4011 AW	X	X
4011A27-10100	X	X
4011A27-10100 with filter	X	X
5000	X	X
5000 (w/Cal. Vapor Re-Circ.)	X	X
5000 (w/3/8" ID Hose option)	X	X
5000 (CAL DOJ)	X	X
5000 (VA)	X	X
PAC 1200	X	X
SD-2	X	X
Decator Electronics, Decator, IL:		
Alco-Tector model 500		X
Intoximeters, Inc., St. Louis, MO:		
Photo Electric Intoximeter		X
GC Intoximeter MK II	X	X
GC Intoximeter MK IV	X	X
Auto Intoximeter	X	X
Intoximeter Model		
3000	X	X
3000 (rev B1)	X	X
3000 (rev B2)	X	X
3000 (rev B2A)	X	X
3000 (rev B2A) w/FM option)	X	X
3000 (Fuel Cell)	X	X
3000 D	X	X
3000 DFC	X	X
Alco-Sensor III	X	X
Alco-Sensor IIIA	X	X
RBT III	X	X
Komyo Kitagawa, Kogyo, K.K.:		
Alcolyzer DPA-2:	X	X
Breath Alcohol Meter PAM 101B	X	X
Life-Loc., Wheat Ridge, CO:		
PBA 300-P	X	X
Lion Laboratories, Ltd., Cardiff, Wales, UK:		
Alcolmeter Model		
AE-D1	X	X
SD-2	X	X
EBA	X	X
Auto-Alcolmeter		X
Luckey Laboratories, San Bernadino, CA:		
Alco-Analyzer Model		
1000		X
2000		X
National Draeger, Inc., Pittsburgh, PA:		
Alcotest Model		
7010	X	X
7110	X	X
7410	X	X
Breathalyzer Model		
900	X	X
900A	X	X
900BG	X	X
National Patent Analytical Systems, Inc., East Harford, CT:		
BAC Datamaster	X	X
Omicron Systems, Palo, Alto, CA:		
Intoxilyzer Model		
4011	X	X
4011AW	X	X
Plus 4 Engineering, Denver, CO:		
Intoxilyzer 5000	X	X
Siemans-Allis, Cherry Hill, NJ:		
Alcomat	X	X
Alcomat F	X	X
Smith and Wesson Electronics, Springfield, MA:		
Breathalyzer Model		
900	X	X

CONFORMING PRODUCTS LIST OF EVIDENTIAL BREATH MEASUREMENT DEVICES—Continued

Manufacturer and model	Mobile	Nommobile
900A	X	X
1000	X	X
2000	X	X
2000 (non-Humidity Sensor)	X	X
Stephenson Corp:		
Breathalyzer 900	X	X
U.S. Alcohol Testing, Inc./Protection Devices, Inc., Dayton, NJ:		
Alco-Analyzer 1000		X
Alco-Analyzer 2000		X
Verax System, Inc., Fairport, NY:		
The BAC Verifier	X	X
BAC Verifier Datamaster	X	X
BAC Verifier Datamaster II	X	X

AUTHORITY: 23 U.S.C. 402; delegations of authority at 49 CFR 1.50 and 501.

Adele Derby,

Associate Administrator for Traffic Safety Programs.

[FR Doc. 91–l6561 Filed 3–15–91; 11:10 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: March 13, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0005.

Form Number: CF 7512, 7512A, 7512B.

Type of Review: Extension.

Title: Transportation Entry and Manifest of Goods Subject to Customs Inspection and Permit.

Description: CF 7512 and 7512A are used to document the transportation of merchandise in-bond from the port of importation to another Customs port prior to final release from Customs custody. CF 7512B is used only for merchandise which is transiting Canada from point to point in the United States, or the United States from point to point in Canada.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 10,000.

Estimated Burden Hours Per Response: 6 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 140,000 hours.

Clearance Officer: Ralph Meyer, (202) 343–0044, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 91–6516 Filed 3–19–91; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Cemeteries and Memorials; Meeting

The Department of Veterans Affairs gives notice that a meeting of the Advisory Committee on Cemeteries and Memorials, authorized by 38 U.S.C. 1001, will be held at the Secretary's Conference Room, room 1105, Department of Veterans Affairs, World Technology Trade Center, 801 I Street, NW., Washington, DC on April 23–24, 1991.

Both sessions will begin at 9 a.m. to conduct routine business. The meeting will be open to the public up to the seating capacity which is about 20 persons. Those wishing to attend should contact Mr. Sydney Farrar, Staff Assistant, National Cemetery System, (phone 202–233–7980) no later than 12 noon, e.s.t. April 15, 1991.

Agenda items will include: (1) Discussion of the overall operation of the National Cemetery System (2) State Cemetery Grants Program (3) Automation support for the NCS (4) 1991 Annual Report.

Any interested person may attend, appear before, or file a statement with the Committee. Individuals wishing to appear before the Committee should indicate this in a letter to the Director, National Cemetery System (40) at 810 Vermont Avenue NW., Washington, DC 20420. In any such letters, the writers must fully identify themselves and state the organization, association or person they represent. To the extent practicable, letters should indicate the matter they want to discuss. Oral presentations should be limited to 10 minutes in duration. Those wishing to file written statements to be submitted to the Committee must also mail, or otherwise deliver them to the Director, National Cemetery System. Letters and written statements as discussed must be mailed or delivered in time to reach the Director, National Cemetery System by 12 noon e.s.t. April 15, 1991. Oral statements will be heard only between 1:30 p.m. and 2 p.m.

Dated: March 13, 1991.

By direction of the Secretary.

Sylvia Chavez Long,

Committee Management Officer.

[FR Doc. 91–6550 Filed 3–19–91; 8:45 am]

BILLING CODE 8320–01–M

Secretary's Educational Assistance Advisory Committee; Meeting

The Department of Veterans Affairs gives notice that a meeting of the Secretary's Educational Assistance Advisory Committee, authorized by 38 U.S.C. 1792, will be held on April 29, 1991, from 8:30 a.m. to 4 p.m. and on April 30, 1991, from 8:30 a.m. to 12 noon. On the morning of April 29, the meeting will take place in room 444 of the Department of Veterans Affairs Central Office, 810 Vermont Avenue NW., Washington, DC 20420. At 1 p.m. on April 29, and on the final day, April 30,

the meeting will take place in room 442, Lafayette Building, 811 Vermont Avenue NW., Washington, DC 20420. The purpose of the meeting will be to discuss and finalize the committee recommendations.

The meeting will be open to the public up to the seating capacity of the conference rooms. Due to the limited seating capacity, it will be necessary for those wishing to attend to contact Mrs. Celia Dollarhide, Executive, Veterans' Advisory Committee on Education (phone 202–233–2152) prior to April 19, 1991. Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before or within 10 days after the meeting. Oral statements will be heard at 3 p.m. on April 29, 1991.

Dated: March 13, 1991.

By direction of the Secretary.

Sylvia Chavez Long,

Committee Management Officer.

[FR Doc. 91–6551 Filed 3–19–91; 8:45 am]

BILLING CODE 8320-01-M

Wage Committee; Meetings

The Department of Veterans Affairs (VA) in accordance with Public Law 92–463, gives notice that meetings of the VA Wage Committee will be held on:

Wednesday, April 3, 1991, at 2 p.m.
Wednesday, April 17, 1991, at 2 p.m.
Wednesday, May 1, 1991, at 2 p.m.
Wednesday, May 15, 1991, at 2 p.m.
Wednesday, May 29, 1991, at 2 p.m.
Wednesday, June 12, 1991, at 2 p.m.
Wednesday, June 26, 1991, at 2 p.m.

The meetings will be held in room 1161, Veterans Affairs Central Office, 810 Vermont Avenue NW., Washington, DC 20420.

The Committee's purpose is to advise the Chief Medical Director on the development and authorization of wage schedules for Federal Wage System (blue-collar) employees.

At these meetings the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules.

All portions of the meetings will be closed to the public because the matters considered are related solely to the internal personnel rules and practices of the Department of Veterans Affairs and because the wage survey data considered by the Committee have been obtained from officials of private business establishments with a guarantee that the data will be held in confidence. Closure of the meetings is in accordance with subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, and as cited in 5 U.S.C. 552b(c) (2) and (4).

However, members of the public are invited to submit material in writing to the Chairperson for the Committee's attention.

Additional informtion concerning these meetings may be obtained from the Chairperson, VA Wage Committee, room 1175, 810 Vermont Avenue NW., Washington, DC 20420.

Dated: March 11, 1991.

By Direction of the Secretary.

Laurence M. Christman,

Executive Assistant, Office of Program Coordination and Evaluation.

[FR Doc. 91–6552 Filed 3–19–91; 8:45 am]

BILLING CODE 8320-01-M

Department of Veterans Affairs

Advisory Committee on Women Veterans; Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 that a meeting of the Advisory Committee on Women Veterans will be held April 10–11, 1991, Hotel Washington, 15th & Pennsylvania Avenue, Washington, DC. The purpose of the Advisory Committee on Women Veterans is to advise the Secretary regarding the needs of women veterans with respect to health care, rehabilitation, compensation, outreach and other programs administered by the Department of Veterans Affairs, and the activities of the Department of Veterans Affairs designed to meet such needs. The Committee will make recommendations to the Secretary regarding such activities.

The session will convene on April 10 from 9 a.m.–5 p.m. and April 11 from 9 a.m.–12 p.m. All sessions will be open to the public up to the seating capacity of the room. Because this capacity is limited, it will be necessary for those wishing to attend to contact Mrs. Barbara Brandau, Committee Coordinator, Department of Veterans Affairs (phone 202/535–7182) prior to April 1, 1991.

Dated: March 13, 1991.

By direction of the Secretary.

Sylvia Chavez Long,

Committee Management Officer.

[FR Doc. 91 6553 Filed 3–19–91; 8:45 am]

BILLING CODE 8320-01-M

federal register

Wednesday
March 20, 1991

Part II

Architectural and Transportation Barriers Compliance Board

36 CFR Part 1192

Americans With Disabilities Act (ADA) Accessibility Guidelines for Transportation Vehicles; Proposed Rules

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1192

[Docket No. 90-3]

RIN 3014-AA09

Americans With Disabilities Act (ADA) Accessibility Guidelines for Transportation Vehicles

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Architectural and Transportation Barriers Compliance Board is issuing proposed guidelines to provide guidance to the Department of Transportation on establishing accessibility standards for transportation vehicles required to be accessible by the Americans with Disabilities Act (ADA) of 1990. The guidelines will ensure that transportation vehicles are readily accessible to and usable by individuals with disabilities in terms of architecture and design, transportation, and communication. The standards established by the Department of Transportation must be consistent with the guidelines.

DATES: Comments should be received by May 20, 1991. Comments received after this date will be considered to the extent practicable.

ADDRESSES: Comments should be sent to the Office of the General Counsel, Architectural and Transportation Barriers Compliance Board, 1111 18th Street, NW., suite 501, Washington, DC 20036. Comments will be available for inspection at this address from 9 a.m. to 5:30 p.m. on regular business days.

FOR FURTHER INFORMATION CONTACT: James Raggio, Office of the General Counsel, Architectural and Transportation Barriers Compliance Board, 1111 18th Street, NW., suite 501, Washington, DC 20036. Telephone (202) 653-7834 (Voice/TDD). This is not a toll-free number. This document is available in accessible formats (cassette tape, braille, large print, or computer disc) upon request.

SUPPLEMENTARY INFORMATION:

Background

The Americans with Disabilities Act (ADA) of 1990 extends to individuals with disabilities comprehensive civil rights protection similar to those provided to persons on the basis of race, sex, national origin, and religion under the Civil Rights Act of 1964. Title II of the ADA prohibits discrimination on the basis of disability in services, programs, and activities provided by public entities, including units of State and local government and the National Railroad Passenger Corporation (Amtrak). Title II contains provisions for making fixed route bus, rapid rail, light rail, commuter rail, and intercity rail systems operated by public entities, and persons under contract with such entities, readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Title II specifically requires that:

- New vehicles purchased or leased after August 25, 1990 must be accessible. See 42 U.S.C. 12141 note, 12142(a), 12161 note, and 12162(a)(2) and (b)(2). See also 49 CFR 37.21, 37.51, and 37.81.[1]
- If used vehicles are purchased or leased after August 25, 1990, good faith efforts must be made to obtain accessible vehicles. See 42 U.S.C. 12141 note, 12142(b), 12161 note, and 12162(c). See also 49 CFR 37.23, 37.53, and 37.83.
- If vehicles are remanufactured after August 25, 1990 to extend their useful life for 5 years or more in the case of buses and rapid rail and light rail vehicles, or for 10 years or more in the case of commuter rail and intercity rail passenger cars, then the vehicles must be made accessible to the maximum extent feasible. See 42 U.S.C. 12141 note, 12142(c), 12161 note, and 12162(d). See also 49 CFR 37.25, 37.55, and 37.85.
- At least one vehicle per train must be accessible as soon as practicable but in no event later than July 26, 1995 in the case of rapid rail, light rail (where 2 or more vehicles operate as a train), commuter rail, and intercity rail systems. See 42 U.S.C. 12141 note, 12148(b), 12161 note, and 12162(a)(1) and (b)(1).

Title II also requires that new vehicles purchased or leased after August 25, 1990 for use in a demand responsive system operated by a public entity, or person under contract with such an entity, must be accessible unless the system, when viewed in its entirety, provides to individuals with disabilities a level of service equivalent to that provided to the general public. See 42 U.S.C. 12141 note, and 12144. See also 49 CFR 37.27. Title II further requires public entities that operate a fixed route bus, rapid rail, or light rail system (other than a system which provides solely commuter bus service) to provide paratransit and other special transportation services to individuals with disabilities, beginning January 26, 1992, to the extent that providing such services would not impose an undue financial burden. See 42 U.S.C. 12141 note, and 12143.

Title III of the ADA prohibits discrimination on the basis of disability in public accommodations and services provided by private entities and contains provisions for making public transportation services (other than by aircraft) operated by such entities readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. In the case of private entities that are not primarily engaged in the business of transporting people such as hotels, shopping centers and recreational facilities which operate shuttle service for their customers and patrons and whose operations affect commerce, title III specifically requires that:

- New vehicles with a seating capacity in excess of 16 passengers (other than an over-the-road bus) purchased or leased after August 25, 1990 for use in a fixed route system must be accessible.[2] See 42 U.S.C. 12181 note, and 12182(b)(2)(B)(i). See also 49 CFR 37.29(a)(1).
- New vehicles with a seating capacity of 16 passengers or less purchased or leased after August 25, 1990 for use in a fixed route system must be accessible unless the system, when viewed in its entirety, ensures to individuals with disabilities a level of service equivalent to that provided to the general public. See 42 U.S.C. 12181 note, and 12182(b)(2)(B)(ii). See also 49 CFR 37.29(a)(2).
- A demand responsive system must be operated in such a manner after July 26, 1990 that, when viewed on its entirety, the system ensures to individuals with disabilities a level of service equivalent to that provided to the general public. See 42 U.S.C. 12181 note, and 12182(b)(2)(C)(i).
- New vehicles with a seating capacity in excess of 16 passengers (other than an over-the-road bus) purchased or leased after August 25, 1990 for use in a demand responsive system must be accessible unless the system, when viewed in its entirety, ensures to individuals with disabilities a level of service equivalent to that

[1] The referenced regulations were published in the Federal Register on October 4, 1990 (55 FR 40764).

[2] The ADA provides that the driver is to be included in determining the seating capacity of a vehicle. See 42 U.S.C. 12182(b)(2)(B) and (C), and 12184(b)(3) and (5). The Department of Transportation interprets seating capacity to mean the number of persons who can be seated in the vehicle without accessibility modifications. See 55 FR 40774 (October 4, 1990).

provided to the general public. See 42 U.S.C. 12181 note, and 12182(b)(2)(c)(ii). See also 49 CFR 37.29(a)(3).

In the case of private entities that are primarily engaged in the business of transporting people and whose operations affect commerce, title III specifically requires that:

- New vehicles (other than an automobile, a van with a seating capacity of less than 8 passengers, or an over-the-road bus) purchased or leased after August 25, 1990 must be accessible, unless the vehicle is to be used solely in a demand responsive system that, when viewed in its entirety, provides to individuals with disabilities a level of service equivalent to that provided to the general public. See 42 U.S.C. 12181 note, and 12184(b)(3). See also 49 CFR 37.29(b)(1) and (2).
- New vans with a seating capacity of less than 8 passengers purchased or leased after February 25, 1992 must be accessible, unless the system for which the van is being purchased or leased, when viewed in its entirety, provides to individuals with disabilities a level of service equivalent to that provided to the general public. See 42 U.S.C. 12181 note, and 12184(b)(5). See also 49 CFR 37.29(c)(1) and (2).
- New rail passenger cars purchased or leased after February 25, 1992 must be accessible. See 42 U.S.C. 12181 note, and 12184(b)(6). See also 49 CFR 37.29(d).
- If rail passenger cars are remanufactured after February 25, 1992 to extend their useful life for 10 years or more, then the rail cars must be made accessible to the maximum extent feasible. See 42 U.S.C. 12181 note, and 12184(b)(7). See also 49 CFR 37.29(e).

Title III also contains provisions for providing access to over-the-road buses (i.e., buses characterized by an elevated passenger deck located over a baggage compartment) operated by private entities. Title III requires the Office of Technology Assessment to conduct a study of the access needs of individuals with disabilities to over-the-road buses and the most cost-effective methods for providing access to such buses. See 42 U.S.C. 12185. Structural changes to over-the-road buses or the purchase of boarding devices to provide access to individuals who use wheelchairs may not be required until after July 26, 1997 for small providers of transportation, and after July 26, 1996 for other providers. See 42 U.S.C. 12186(a)(2). The President may extend those dates by one year if the President determines that the requirements will result in a significant reduction in intercity over-the-road bus service. See 42 U.S.C. 12185(d). Over-the-road buses purchased or leased after January 26, 1992 but before the above stated dates may be required to include accessibility features which do not involve structural changes or use of boarding devices. See 42 U.S.C. 12181 note, 12162(b)(2)(D), 12184(b)(4), and 12186(a)(2)(A)(i). See also H. Rept. 101–485, pt. 1, at 43.

The Department of Transportation (DOT) is generally responsible for issuing regulations to implement the transportation provisions of the ADA that include accessibility standards for transportation vehicles by July 26, 1991.[3] See 42 U.S.C. 12149, 12163, and 12186. The ADA requires that the Architectural and Transportation Barriers Compliance Board issue guidelines to provide guidance to DOT on establishing the accessibility standards for transportation vehicles.[4] See 42 U.S.C. 12204. The ADA states that the Board's guidelines are "to ensure that * * * vehicles are accessible, in terms of architecture and design, transportation, and communication, to individuals with disabilities." [5] Id. The legislative history of the ADA provides further guidance regarding the level of accessibility to be provided. The House Committee Reports state that the ADA is intended to enable people with disabilities (including mobility, sensory, and cognitive impairments) to enter into and exit, and safely and effectively use transportation vehicles; and that, in addition to providing access to individuals who use wheelchairs, the design of new vehicles should include such features as non-slip floor surfaces, contrasting edges on steps, handrails and adequate illumination in boarding areas, contrasting characters on signage, public address systems for audible announcements, automatic door closing alarms, and systems for providing information for persons with hearing impairments. See H. Rept. 101–485, pt. 1, at 27; H. Rept. 101–485, pt. 2, at 88–89; H. Rept. 101–485, pt. 4, at 44.

The proposed guidelines are organized into nine subparts according to types of transportation vehicles and systems as follows:

Subpart A—General
Subpart B—Large Buses and Systems
Subpart C—Rapid Rail Vehicles and Systems
Subpart D—Light Rail Vehicles and Systems
Subpart E—Commuter Rail Cars and Systems
Subpart F—Intercity Rail Cars and Systems
Subpart G—Vans and Small Buses
Subpart H—Over-the-Road Buses and Systems
Subpart I—Other Vehicles and Systems

Each subpart contains accessibility requirements for the various elements and features of the covered transportation vehicles and systems. As further discussed under the Section-by-Section Analysis, wherever possible the Board used existing guidelines, regulations, and industry practices in developing the proposed guidelines.

Section-by-Section Analysis

Subpart A—General

Section 1192.1 Purpose

These guidelines serve as the basis for accessibility standards to be issued by DOT for transportation vehicles required to be accessible by the ADA.

Section 192.3 Definitions [Reserved]

DOT is required to issue final regulations containing accessibility standards for transportation vehicles based on these guidelines by July 26, 1991. This section has been reserved pending publication of the final DOT ADA regulations so that the definitions included in the Board's guidelines will be consistent with the DOT ADA regulations. For purposes of commenting on these proposed guidelines, a set of interim definitions has been included as an appendix to this preamble. Unless otherwise noted, the definitions in the appendix are taken directly from the DOT ADA regulations published in the **Federal Register** on October 4, 1990 (55 FR 40764). Readers should look to that document for explanations of definitions which are not discussed below. Depending on comments submitted to DOT, it is possible that some of the definitions may be revised when DOT issues its final regulations in July 1991. Additional definitions are included to aid in understanding the guidelines or to further expand on a definition of a term contained in the DOT ADA regulations. Since these guidelines only cover design

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[3] DOT issued regulations on October 4, 1990 containing interim accessibility standards for transportation vehicles. See 55 FR 40764.

[4] The Board is an independent Federal agency established pursuant to section 502 of the Rehabilitation Act of 1973 to ensure that the requirements of the Architectural Barriers Act of 1968 are met and to propose alternative solutions to architectural, transportation, communication, and attitudinal barriers faced by individuals with disabilities. The Board consists of 12 members appointed by the President from among the general public, at least six of whom are required to be individuals with disabilities, and the heads of 11 Federal agencies or their designees (Executive Level IV or above). The Federal agencies are: the Department of Health and Human Services, Education, Transportation, Housing and Urban Development, Labor, Interior, Defense, Justice, and Veterans Affairs; General Services Administration; and United States Postal Service.

[5] The ADA also requires the Board to issue accessibility guidelines for buildings and facilities. Proposed guidelines were published in the **Federal Register** on January 22, 1991 (56 FR 2296). Additional proposed guidelines for transportation facilities are published elsewhere in today's **Federal Register**.

ot vehicles and systems, as opposed to operational issues which will be addressed by DOT, some definitions in the DOT ADA regulations, such as "commuter authority," "qualified individual with a disability," "private entity," "solicitation," have not been included in the appendix.

The term *accessible* is defined as meeting the minimum requirements of the guidelines.

An *automated guideway transit (AGT) system* means a fixed guideway transportation system which operates with small automated (driveless) individual vehicles or multi-car trains. These systems are often used to provide transportation between airport terminals or central business district circulation. Typical examples are Airtrans in the Dallas-Fort Worth Airport; the Downtown Component of Metro (DCM) in Miami; and the Fairlane People Mover in Dearborn, Michigan. Airtrans and the Miami DCM operate on a fixed schedule, while the Fairlane system responds to a call button, similar to an elevator. In fact, AGT systems have sometimes been called "horizontal elevators" because they usually operate behind a "platform screen" which separates the passenger waiting area from the guideway and which has doors that open only when a vehicle is properly positioned on the other side, just like an elevator.

The definition of *bus*, which does not include an over-the-road bus, is included to address two potential issues. Under earlier DOT regulations, there was a question as to whether a "trolley bus" was a bus or a fixed guideway vehicle, since it could not theoretically deviate from its "guideway" which is defined by overhead power lines. Since such vehicles are structurally buses for all practical purposes, they have been considered buses by DOT and this definition incorporates that understanding. Recently, several cities have instituted service, especially in historic districts, with new buses designed to look like historic trolleys. Title II of the ADA contains an exception for remanufactured vehicles of historic character. See 42 U.S.C. 12142(c)(2). See also 49 CFR 37.25 (d) and (e). Since these buses are not remanufactured vehicles, they do not qualify for the exception.

A definition of *common wheelchairs and mobility aids* has been included to clarify the types of wheelchairs and mobility aids which must be accommodated. The definition corresponds to the size and weight restrictions imposed by the lift (i.e., not more than 30 inches wide, 48 inches long, and 600 pounds when occupied). See §§ 1192.23(b) (1) and (6). The term includes power wheelchairs and three wheeled "scooters" which are specifically mentioned in the legislative history. See H. Rept. 101–485, pt. 2, at 89. The phrase "usable indoors" is intended to preclude devices which are designed solely for recreational or outdoor use, including devices with internal combustion engines, but is not intended to exclude heavy-duty wheelchairs and mobility aids which can be used both indoors and outdoors, provided that they do not exceed the size and weight limits. The definition is also intended to exclude devices which might be used by a person with a disability but were not designed for that purpose, such as certain "all-terrain" vehicles. The definition is not intended to include walkers, crutches or other similar devices.

The definition of *demand responsive system* is taken from the DOT ADA regulations. As explained in the preamble to the DOT ADA regulations, a demand responsive system.

> * * * involves an interaction between the user and the system, beyond waiting at a stop for a bus. If, in order to receive service, a potential user must, or may, call in advance to request service, the system would be considered demand responsive rather than fixed route, even though there may be fixed starting and ending points * * *. 55 FR 40766 (October 4, 1991).

For example, if a particular service must be arranged in advance by telephone or subscription, it would be considered a demand responsive system. Demand responsive systems are also referred to as "paratransit".

The definition of *high speed rail* has been added to address the type of system currently being planned for operation between Las Vegas and Anaheim; Orlando and Disney World/Epcot; and in the Fort Worth/Dallas/Houston triangle. Because the trains on these systems will travel at speeds which are incompatible with most existing railroads, they will not operate on existing freight lines. Instead, the systems will build their own dedicated track or special guideway and will not be affected by the station platform set-back requirements that restrict high platform boarding on intercity rail and commuter rail systems which operate on existing freight lines.

The definition of *historical or antiquated rail passenger car* is taken directly from title III of the ADA which contains an exception for remanufactured historical or antiquated rail cars operated by private entities. See 42 U.S.C. 1284(c). Title II of the ADA also contains an exception for remanufactured buses and rapid rail and light rail vehicles of historic character operated by public entities. See 42 U.S.C. 12142(c)(2). DOT is responsible for defining a vehicle of historic character for purposes of title II.

The definition of *light rail* is taken from DOT regulations at 49 CFR part 27 implementing section 504 of the Rehabilitation Act of 1973 (hereinafter referred to as the "DOT 504 regulations"). A sentence has been added to cover the light rail system operating in Los Angeles and the one being built in St. Paul which, although they use light rail vehicles, operate in a manner similar to rapid rail and provide level boarding.

The definition of *person with a disability* is taken from the DOT ADA regulations but does not include the further description of physical or mental impairment or major life activities.

The definition of *rapid rail* is derived from the DOT 504 regulations, with an additional sentence clarifying that rapid rail does not always operate in subways.

Subpart B—Large Buses and Systems

Section 1192.21 General

The guidelines have been divided into subparts for large buses (subpart B) and small buses (subpart G) based on gross vehicle weight rating (GVWR). The proposed GVWR division generally separates typical urban transit buses from vans and small buses. The GVWR division, however, may not be useful to private entities. For a private entity which purchases vehicles based on passenger carrying capacity, for example, the GVWR division may have no meaning. Moreover, vehicles used in intercity service, which may or may not be over-the-road buses, generally conform to categories defined by the Federal Highway Administration which may have little or no relationship to the proposed GVWR division.

Another potential way to categorize vehicles would be by type of lift (i.e., active or passive).[6] As discussed under § 1192.23, the documents which are used in as the basis for many of the provisions for mobility aid accessibility are divided by type of lift. Those documents contain relaxed provisions for active lifts since they are typically used in demand responsive service

[6] The term "active lift" refers to the type used primarily on vans and small buses which, when folded into its stowed position, normally blocks the door in which it is installed. Such a device must be deployed or activated each time the door is to be used. By contrast, "passive lifts" remain hidden, or passive, in the doorway until deployed and generally do not interfere with other pasengers' use of the doorway.

where the driver can offer assistance in boarding and alighting. Unfortunately, driver assistance cannot always be assured and, as discussed below, the Board has not adopted some of those relaxed provisions for this reason.

Some provisions contained in this subpart are more relevant to one type of service than another. For example, a public address system or exterior destination and route signs may be appropriate for a multi-stop, fixed route service where passengers can board and alight at will. On the other hand, a demand reponsive service takes passengers directly from origin to destination so announcement of "stops" is unnecessary; and the route and destination change at each pick-up point and do not need to be communicated to people outside the vehicle. The same generally holds true where fixed route vehicles operate solely between one or two points, such as between an airport and a hotel.

Question 1.[7] The Board requests comments on whether a division other than the one proposed would be more useful such as passenger capacity, type of lift (i.e., active or passive), or type of service (i.e., fixed route or demand responsive). If so, what division should be used? Since the majority of the provisions for both large and small buses are similar, should both types of vehicles be covered under a single subpart with "exceptions" to various provisions based on passenger capacity, type of lift, or type of service?

Paragraph (a) states that large buses required to be accessible by the DOT ADA regulations must comply with the applicable provisions of this subpart. This does not include over-the-road buses which are covered by subpart H.

Paragraph (b) provides that if an element or feature of a vehicle is replaced or modified, it must comply with the accessibility requirements for that element or feature, to the extent feasible. For example, if new flooring is installed, it would need to be slip resistant. See § 1192.25(a). If the step covering is replaced, a band of contrasting color would need to be applied. See § 1192.25(b). This provision is not intended to trigger additional accessibility of elements not altered and does not require that an inaccessible bus be retrofitted with a lift.

However, if the lift of an accessible bus is replaced, the new lift would be required to comply with these guidelines, if it is structurally feasible.

Section 1192.23 Mobility Aid Accessibility

This section sets forth the requirements for mobility aid accessibility for large buses. Many of these provisions are restated under subparts D, E, F, and H for light rail, commuter rail, intercity rail, and vans and small buses. The discussion in this subpart should be referred to for information on the provisions for those modes. See §§ 1192.83, 1192.95, 1192.125, and 1192.133.

Currently, the most often used device to provide access to large buses is a lift, although some mid-sized buses use manual and automatic ramps. Ramps offer some advantages over lifts since they need to be deployed only once to board several people. Lifts have a fixed platform length which restricts the length of the wheelchair or mobility aid accommodated, while ramps do not. A low floor bus, a necessity for a usable ramp, also has advantages for people with semi-ambulatory disabilities because it permits shorter and fewer steps that would be more beneficial to such persons than either a ramp or lift.

Question 2: There have been attempts over the years to develop low floor buses suitable for typical public transportation systems. Low floor buses currently available have high front wheel housings which make them unsuitable for seats. The Board requests comments on how the production of low floor buses suitable for typical public transportation systems could be encouraged in the most cost-effective manner possible.

The provisions in this section are generally based on advisory guidelines developed in 1986 under the sponsorship of the Urban Mass Transportation Administration (UMTA). An Advisory Panel composed of lift and vehicle manufacturers, transit operators, state and local government officials, individuals with disabilities, wheelchair manufacturers, and federal government agencies developed four documents: *Guideline Specifications for Active Wheelchair Lifts; Guideline Specifications for Passive Wheelchair Lifts; Guideline Specifications for Wheelchair Ramps;* and *Guideline Specifications for Wheelchair Securement Devices.*[8] Since the provisions of the various *Guideline Specifications* were developed through a consensus process that included lift and vehicle manufacturers, the recommendations have generally been accepted and incorporated in designs voluntarily by manufacturers. To the extent practical, taking into account the specific requirements of the ADA and the Board's responsibility to ensure that people with disabilities can safely and effectively use transportation vehicles, the Board has generally followed the *Guideline Specifications.* As further discussed below, if a provision in this section differs from the *Guideline Specifications* it is because of safety reasons or difficulty experienced by persons with disabilities in using the design. Some provisions of the *Guideline Specifications* have not been adopted because the concern operational issues or mechanical components like hydraulic hoses and fittings that do not directly affect accessibility.

Some of the provisions of this section are also based on existing or proposed specifications adopted by the State of California. See California Administrative Code, title 13, chapter 2, subchapter 4, article 15, Wheelchair Lifts (hereinafter referred to as the "California specifications"). California is one of four states which currently requires buses to be accessible by state statute and has adopted many of the substantive provisions of the *Guideline Specifications.* To compete in this large market, most lift and vehicle manufacturers have incorporated the California specifications directly into designs or offer an option complying with those specifications.

Paragraph (a) provides that at least one space must be provided on large buses for wheelchair and mobility aid users. The issue of how many spaces should be provided on vehicles has been much debated. The House Committee on Education and Labor addressed the issue as follows:

> The requirement that a vehicle is to be readily accessible obviously entails that each vehicle is to have some spaces for individuals using wheelchairs or other mobility aids; how many spaces per vehicle are to be made available for wheelchairs is, however, a determination that depends upon various factors, including the number of vehicles in the fleet, the seat vacancy rates, and usage of people with disabilities.
>
> The Committee intends, consistent with these factors, that the determination of how many spaces must be available for

[7] Throughout the preamble, the Board asks questions or seeks information on specific issues. To assist interested parties in responding to the questions and to facilitate analysis of responses to the questions, each question is numbered and commenters are encouraged to clearly identify or refer to the question number in their comments. Where applicable, commenters are also encouraged to provide empirical data or existing analyses that may shed light on costs related to the provisions.

[8] The documents referred to in the preamble are available for inspection at the Board's office. Unless otherwise noted, copies of the documents may be obtained from the National Technical Information Service (NTIS) in Springfield, Virginia.

wheelchair use should be flexible and generally left up to the provider, provided that at least some seats on each vehicle are accessible. Technical specifications and guidance regarding lifts and ramps, wheelchair spaces, and securement devices are to be provided in the minimum guidelines and regulations to be promulgated under this legislation. These minimum guidelines should be consistent with the Committee's desire for flexibility and decisionmaking by the provider. H. Rept. 101–485, pt. 2, at 88.

Question 3(a): The number of spaces provided for wheelchair and mobility aid users may also be determined by configuration of the vehicle. For example, a 96 inch wide bus has a narrower aisle than a 102 inch wide vehicle, and space to maneuver a second wheelchair or mobility aid into place near the front door may be constrained. The same restrictions may not apply to a rear door location or an articulated (bend-in-the-middle) bus which generally has a wide aisle and more maneuvering room at the front because the aisle facing seats are higher. The Board seeks information on the maximum number of spaces for wheelchair and mobility aid users that can be accommodated on different configurations (e.g., front door lift, rear door lift) of various large buses (e.g., 96 inch wide bus, 102 inch wide bus, articulated bus).

Question 3(b): As indicated in the House Committee on Education and Labor Report, operational considerations will also affect the number of spaces provided for wheelchair and mobility aid users. The longer the headway (interval) is between accessible vehicles, the greater the need is for spaces for wheelchair and mobility aid users. For instance, if the headway between accessible buses on a fixed route system is 1 to 2 hours (which is common on some routes), once a person with a wheelchair or mobility aid boards the vehicle, the bus is "filled" to capacity as far as other wheelchair and mobility aid users are concerned. For a wheelchair or mobility aid user, being passed by a "filled" bus and having to wait several hours for another accessible bus which may also be "filled," will very likely discourage ridership. Since individual buses may be assigned to different routes each day and the number of spaces for wheelchair and mobility users cannot be readily changed, the Board requests comments on whether it is desirable that more than one space be provided on large buses for wheelchair and mobility aid users.

Question 3(c): The number of spaces provided for wheelchair and mobility aid users will also vary according to mode. A level boarding rapid rail system, for example, can usually accommodate one wheelchair or mobility aid user at each door, if the handrail configuration is properly planned. Since rapid rail systems typically operate multi-car trains, the number of wheelchair and mobility aid users who can be accommodated on that mode is a function of the train length. In the case of light rail and commuter rail systems, all new vehicles must be accessible but some systems provide access to the vehicles with a mini-high platform or platform-mounted lift. (Platform-mounted lifts are also referred to as "wayside" lifts.) If two car trains are operated in such systems, the transit agency could: (1) Install a second mini-high platform or wayside lift to accommodate the second accessible vehicle; (2) double-stop (i.e., move the train to align the second vehicle door with the one mini-high platform or wayside lift to serve the second car); or (3) provide additional spaces for wheelchair and mobility aid users in the first car. Building a second mini-high platform or wayside lift is costly and double-stopping presents serious operational problems. Providing additional spaces in the first car may be more cost-effective. In the case of intercity rail, the ADA contains a formula for the number of spaces to be provided for wheelchair and mobility aid users which equates the number of spaces to the number of single-level rail passenger cars per train so that wheelchair and mobility aid access would only be required on half the total number of such cars. See 42 U.S.C. 12162(a)(3). The Board requests comments on whether a similar formula should be permitted for light rail and commuter rail as an alternative to building a second mini-high platform or wayside lift, or double-stopping and, if so, what should be the maximum number of spaces provided in any one car for wheelchair and mobility aid users.

Question 3(d): With the possible exception of vehicles with reserved seating arrangements, increasing the number of spaces provided for wheelchair and mobility aid users usually increases the overall passenger carrying capacity, including standees. The spaces can be equipped with a fold-down seat to accommodate other passengers when not occupied by a wheelchair or mobility aid user. Providing more than one space for wheelchair and mobility aid users would potentially increase the number of passengers that can be carried on vehicles during peak periods. While some passengers will presumably place a premium on the ability to find a seat, others will place a premium on being able to board the vehicle and arrive at their destination earlier rather than wait for another vehicle. In fact, the Washington Metropolitan Area Transportation Authority recently ordered rapid rail cars with fewer seats so it could accommodate more passengers. The Board seeks information on whether there is a point at which a decrease in seats adversely affects ridership and, thus, operating revenues. The Board is particularly interested in any studies which attempt to quantify this cost impact for the various modes of transportation. The Board also seeks information on whether providing more than one space for wheelchair and mobility aid users has any detrimental effect on operations.

Paragraphs (b) (1) through (13) set forth the requirements for lifts to be used as boarding devices. Paragraph (b)(1) specifies design load and is based on sections 2.3.1, 2.3.2, and 2.4.1.1 of the *Guideline Specifications for Passive Wheelchair Lifts.*[9] The 600 pound design load is common practice and is generally agreed to by lift manufacturers. It is based on information from wheelchair manufacturers that heavier power wheelchairs weigh up to 250 pounds. The 99th percentile male weighs approximately 241 pounds for a combined weight of 491 pounds. A typical manual wheelchair weighs about 60 pounds, and with a 99th percentile male rider, the total is 301 pounds. If a 99th percentile male attendant accompanies the manual wheelchair user on the lift, the combined total is 542 pounds. Since it is unlikely that an attendant would accompany a power wheelchair user on the lift because the power wheelchair can be operated independently and would take up most of the lift platform, the proposed design load appears to accommodate the assumed population. The design load is not the maximum load that the lift can support but rather the load that it is designed to raise and lower. Components on which the lift depends for support must have a safety factor of six (i.e., 3,600 pounds) while non-working parts must have a safety factor of three (i.e., 1,800 pounds).

Paragraph (b)(2) concerns controls and interlock systems and is derived from sections 2.5.4.2, 2.5.4.3, and 2.5.8 of the *Guideline Specifications.* The

[9] Unless otherwise noted, the references to the *Guideline Specifications* in connection with paragraphs (b) (1) through (13) mean the *Guideline Specification for Passive Wheelchair Lifts.*

provision is less specific and more performance oriented than the designs incorporated in current lift models. Section 2.5.8.1 of the *Guideline Specifications for Active Wheelchair Lifts* permit the substitution of a warning light for the interlocks but the Board has not adopted this option because it introduces an element of possible human error into a safety factor. The requirement for the controls to allow raising or lowering is to permit the driver to reverse operation, if necessary. The requirement that such reversal not permit stowing when the platform is occupied responds to several reported accidents in which lifts apparently folded when occupied and caused serious injury to wheelchair users. At least one death is known to have occurred and there are conflicting reports as to whether the death resulted from the failure of the outer safety barrier or the inadvertent folding of the platform due to driver error.

Paragraph (b)(3) deals with emergency operation and is based on section 2.5.7 of the *Guideline Specifications*. The wording is taken from the California specifications. This requirement is simply for the design of a system which can be used in the event of a power failure and is consistent with current design of commercially available lifts.

Paragraph (b)(4) is adopted from section 2.4.2 of the *Guideline Specifications* and requires that the lift incorporate a "braking" or "damping" mechanism similar to elevators, which prevents the platform from falling more than twice the maximum operational speed. For active lifts which are stowed in a vertical position, the platform must not be permitted to fold down faster than this requirement. Such lifts are often unfolded or deployed manually and this provision guards against a possible hazard if the driver loses control of the platform while unfolding it.

Paragraph (b)(5) concerns safety barriers and incorporates a performance criterion based on sections 2.2.6.2 and 2.2.6.3 of the *Guideline Specifications*. The second sentence is based on section 2.2.6.4 of the *Guideline Specifications* and provides for "roll stops" on the inner edge of the platform to prevent a wheelchair or mobility aid from rolling off the edge of the lift adjacent to the vehicle until the lift is at floor height. Some lifts use part of the bus to perform this function while others have a flap which drops to form a transition from the lift to the vehicle floor. There is also a requirement that the sides of the lifts have barriers to prevent the wheels from rolling off. The side barriers need only protect the part of the platform which extends beyond the vehicle. This is so the barriers do not extend into the bus at the top of the cycle and thus interfere with the maneuverability of a wheelchair or mobility aid into the vehicle.

Question 4: Paragraph (b)(5) also requires a barrier on the outer edge of the lift which must prevent a wheelchair or mobility aid from rolling off the platform, or riding over the barrier in case a power wheelchair user accidently hits the chair control. Section 3.1.6 of the *Guideline Specifications* includes a test procedure involving specified power wheelchairs. Some transit agencies have specified that the front and rear barriers must slant in toward the platform under the assumption that this is necessary to prevent a power wheelchair from riding over the barrier. There is no evidence to support this contention. In fact, the power wheelchairs specified in the test procedure would be unable to ride over a vertical barrier if it were the appropriate height and slanting the barrier inward would reduce the platform length. Pending further tests, the Board proposes a performance requirement. Instead of specifying a height for the outer safety barrier when raised or closed, paragraph (b)(5) specifies that it withstand a static load of 1,600 pounds, applied at a height of 3 inches above and parallel to the platform, for 5 seconds without deflecting more than 5 degrees from the unstressed position. This performance requirement is taken from the California specifications and the Department of Veterans Affairs standard for wheelchair lifts. See *Veterans Administration Wheelchair Lift Systems: VA Standard Design and Test Criteria for Safety and Quality of Automatic Wheelchair Lift System for Passenger Motor Vehicles*, 49 FR 21390 (May 17, 1978). The Board requests comments on whether the proposed performance requirement for the outer safety barrier is adequate or whether a specific test procedure should be incorporated in paragraph (b)(5). The Board seeks information on any incremental costs associated with either the proposed performance requirement or a specific test procedure.

The last two sentences of paragraph (b)(5) provide alternative ways to ensure that the platform is not raised if the outer safety barrier is not locked or closed. These designs are currently incorporated in most commercially available lifts.

Question 5: Paragraph (b)(6)(i) concerns the lift platform surface. The first sentence requires slip resistant surfaces and is derived from sections 2.2.2 and 2.2.3 of the *Guideline Specifications*. A Board sponsored research project on *Slip Resistant Surfaces* recommends that such surfaces, other than on ramps, have a static coefficient of friction of 0.6. The Board is considering including this value in its proposed guidelines for buildings and facilities. See 56 FR 2310 (January 22, 1991). The Board requests comments on whether this value should be included in paragraph (b)(6)(i) and analogous provisions for other vehicles where slip resistant surfaces are required. See §§ 1192.25(a), 1192.59, 1192.79(a), 1192.83(b)(6), 1192.95(b)(6), 1192.99(a), 1192.117(a), 1192.125(b)(6), 1192.133(b)(6), 1192.137(a), and 1192.153(a).

The platform size proposed in paragraph (b)(6)(i) differs from that recommended in section 2.2.1 of the *Guideline Specifications*. The *Guideline Specifications* specify a minimum clear length of 44 inches measured 2 inches above the surface of the platform based on data supplied by wheelchair manufacturers on percentages of wheelchairs with various lengths. The data indicate that 90% of wheelchairs sold are 44 inches or less and a platform with a minimum clear length of 44 inches measured 2 inches above the surface of the platform would accommodate the majority of wheelchairs since the inner and outer safety barriers generally slope upward and can be cleared by foot rests or the curve of the rear wheel.

In the Board's view, the 44 inch platform is not consistent with actual ridership data and a 48 inch platform is proposed. Information presented during Advisory Panel meetings on the *Guideline Specifications* from transit agencies such as the Southern California Rapid Transit District (SCRTD) and Seattle Metro, which currently provide accessible fixed-route service, is that 50% of mobility aid users who ride their systems, use larger power wheelchairs and three wheeled "scooters". Thus, the population of transit riders is skewed toward larger power mobility aids rather than distributed over the normal range of wheelchair types. This seems reasonable since the use of a power mobility aid is one way to reduce or eliminate the distance barrier from origin to bus stop. In addition to their larger size, many power mobility aids have small wheels or other physical characteristics which do not clear the inner and outer safety barriers. This is especially true for the newer lift designs which have very high barriers to prevent wheelchairs or mobility aids from riding

over them. Information supplied by SCRTD indicates that of the three types of lifts in its fleet, only one would be unable to meet a 48 inch requirement. Furthermore, even this lift manufacturer has reportedly redesigned its lift to create a longer platform in response to concerns raised by another large transit agency. The 30 inches by 48 inches requirement is also a commonly accepted standard for lift platforms in buildings and facilities. See UFAS § 4.11.2 and ANSI A117.1–1986, § 4.11.2.

The shaded area of Figure 1 shows the clear volume required for the lift platform. Inner and outer safety barriers on the lift may not intrude into this area when raised. This clearance is required to extend to 30 inches above the platform surface to ensure clearance to the top of the armrests. For clearance above this level, see *Question 21(c)* regarding doorway height. The anti-tip bars of some common wheelchairs and mobility aids are placed below the 2 inch height at which the minimum platform length is specified. Sometimes these anti-tip bars are so low they scrape the ground when the wheelchair or mobility aid user attempts to negotiate even a moderate ramp. The Board encourages wheelchair and mobility aid designers and manufacturers to consider whether anti-tip bars can be placed above the 2 inch height so they can clear the inner and outer safety barriers.

Question 6(a): The maximum lift platform length which can be accommodated on a bus is partly determined by the width of the bus; the location of the lift (front or rear door); and the presence of the steering column, drive train, or other equipment under the chassis. The choice of front or rear door lift location is a complex issue related to a variety of structural and operational factors and these guidelines do not propose to specify the location. The Board does not wish to inadvertently mandate one location over the other through a specification of a lift platform length which cannot be accommodated in the front or rear door. On the other hand, these guidelines need to take into consideration how the needs of persons who use various common wheelchairs and mobility aids can be accommodated. The Board seeks information on the maximum lift platform length which can be accommodated on various types of large buses with front and rear door lift locations and any incremental costs associated with longer lift platforms. If not all vehicle types can accommodate the same size lift platform, would specifying different sizes by type of vehicle and lift location present a problem for wheelchair and mobility aid users who would not necessarily know in advance whether a particular bus could accommodate them? If a longer lift platform is required, should it be phased in on a specified timetable? If so, what should the timetime be?

Question 6(b): A potential impact of permitting a smaller lift platform is that the ADA requires public entities to provide paratransit to individuals with disabilities who cannot use fixed route services. See 42 U.S.C. 12143. Thus, a smaller lift platform can result in excluding potential riders who use larger mobility aids from fixed route service and making them eligible for paratransit. As noted above, some transit agencies which provide accessible fixed route service report that as many as 50% of riders who use mobility aids, use larger power wheelchairs and three wheeled "scooters". The Board seeks data from local areas on the potential number of wheelchair and mobility aid users would not be accommodated by: (a) A 44 inch lift platform and (b) a 48 inch lift platform. The Board also seeks data from local areas on the average cost per passenger for paratransit.

The exception in paragraph (b)(6)(ii) provides for some smaller buses in which the front door frame structural post would prevent the installation in the front door of a 30 inch wide lift without major modification, since the door post location is dictated by the front wheel position. The exception still makes it clear that the widest possible platform is to be achieved.

Paragraph (b)(7) deals with platform gaps and is derived from section 2.2.4 of the *Guideline Specifications*. A provision has been added based on the California specifications to address a safety issue with a particular lift design in which the outer safety barrier, when deployed, moves up and out leaving a substantial gap which wheelchair casters have reportedly fallen through.

Question 7: The minimum gap specified in the last sentence of paragraph (b)(7) refers to the forward edge of the platform where it meets the floor of the bus. Since bus doors, when open, take up space on both sides of the lift platform, the platform must be narrower than the step well. This often results in a gap along the side of the platform which cannot be protected by a side barrier because such a barrier would prevent the wheelchair or mobility aid from turning into the bus aisle from a front door lift. However, the problem which such a side gap poses appears to be minimal since the wheelchair or mobility aid has only one wheel crossing the gap at an angle, and the chances of the wheel being caught is slight. The Board is not aware of any problems with current front door lift designs but seeks information, as well as any practical suggestions, on how the side gap might be eliminated or reduced without also interfering with maneuvering the wheelchair or mobility aid into the vehicle.

Question 8: Paragraph (b)(8) concerns the platform entrance ramp and is derived from section 2.2.3 of the *Guideline Specifications* and the California specifications with modifications. The California specifications prescribe a maximum slope of 1:6 with no limit on the rise. The 1:8 ratio is consistent with UFAS § 4.1.6(4)(a), Table 2 and ANSI A117.1–1986, § 4.8.2, Table 3. The Board is not convinced that a steeper slope is safe or can be negotiated by some three wheeled "scooters" which tend to "bottom out" on steep short slopes. The California specifications also permit a transition or lip on the ramp of 5/8 inch. The Board believes the ramp can be tapered to within ¼ inch or have a beveled edge of no more than ½ inch, which is consistent with common accessibility standards for buildings and facilities. See UFAS § 4.5.2 and ANSI A117.1–1986, § 4.5.2. The Board requests comments on whether the slope and threshold specifications can be achieved.

Paragraph (b)(9) specifies the maximum lift platform deflection and is derived from section 2.2.5 of the *Guideline Specifications* and the California specifications. When loading, a bus will be tipped slightly to the right due to road crown and, depending on the size of vehicle and suspension, the weight of a wheelchair or mobility aid will cause the vehicle to tip further. The provision is designed to limit additional "listing" due to the deflection of the platform itself and is not intended to include the tilting of the vehicle. For mechanical and structural reasons, this deflection cannot be completely eliminated but the 3 degree deflection is currently achievable and appears to be reasonable. While the *Guideline Specifications* require a load of 600 pounds, the California specifications specify 375 pounds. The 600 pound load is based on the same information as the lift design load. The 26 inch square test pallet is used because common wheelchairs and mobility aids are 26 inches wide and a 26 inch length is between a 36 inch wheel base for a common three wheeled "scooter" and

the 20 inch wheel base of a common power wheelchair.

Question 9: Paragraph (b)(10) concerns lift platform movement and is derived from section 2.5.11 of the *Guideline Specifications.* The California specifications permit lift platform motion up to 11.8 inches per second which was considered too fast by the Advisory Panel which developed the *Guideline Specifications.* The Advisory Panel reviewed a variety of transit agency bid documents and concluded a rate of 6 inches per second falls within the range of the majority. A UMTA sponsored report, *Safety Guidelines for Wheelchair Lifts on Public Transit Vehicles,* recommends a maximum acceleration rate of 0.3g but the Advisory Panel which developed the *Guideline Specifications* adopted a value of 0.2g as providing a more desirable condition, especially for standees. The report also recommends a maximum jerk rate of 0.3g/second (rate of change of acceleration) but little data are available on the suitability of this value. The Board requests comments on these specifications.

Paragraph (b)(11) deals with boarding direction and is derived from section 2.1.4 of the *Guideline Specifications.* Transit agencies often recommended that passengers using wheelchairs and mobility aids back on to the lift (facing outward from the bus) for easier movement to the securement location, especially for a front door lift. This orientation places the weight of the mobility aid close to the bus and provides a better mechanical advantage for the lift. However, it is difficult for some persons with disabilities to back a wheelchair or mobility aid with sufficient control. Control is particularly important when other passengers occupy the aisle-facing seats in a front door lift equipped bus. The lift should work properly when the weight of the chair is concentrated at points other than close to the bus. This is especially important when standees are accommodated at the outer edge of the platform.

Paragraph (b)(12) is based on the House Committee on Education and Labor Report which states that:

> It is the Committee's intent that the obligation to provide lift service applies, not only to people who use wheelchairs, but also to other individuals who have difficulty in walking. For example, people who use crutches, walkers or three-wheeled mobility aids should be allowed to use a lift. H. Rept. 101–485, pt. 2, at 89.

Current lift designs have been used by standees in urban transit operations for many years. The Board is not aware of any problems with this use. Transit agencies that have not permitted standees to use lifts have done so based on policy determinations rather that data. For example, several years ago, Milwaukee County and Washington Metropolitan Area Transportation Authority (WMATA) took delivery of the same type buses with identical lifts. Both agencies initially declared it "unsafe" for standees to ride the lift, citing head clearance problems. WMATA was eventually persuaded to test its assertion by permitting a group of persons with various semi-ambulatory disabilities to ride the lift but the problems anticipated did not materialize. WMATA changed its policy to permit use by standees while Milwaukee County continued to assert a safety problem. Similarly, Seattle Metro has allowed standees to use its lifts, simply having drivers remind passengers to "watch your head,'" with no report of problems. A pair of footprints has been painted on the platform of Seattle's lift to indicate the correct place to stand.

Question 10(a): One lift model raises standees fully within the vehicle where there is no head clearance problem and another lift model raises passengers completely outside the vehicle where, again, there is no clearance problem except for the cautionary statement from drivers when passengers move through the door. A third lift model starts with the passenger outside the door, moves up and in through an arc, and ends with the passenger inside the vehicle. It is this design which has raised the most concern for safety. However, the Board is not aware of any problems even with the latter design. The Board seeks information on any problems with accommodating standees on lifts. The Board also seeks data on any incremental costs related to accommodating standees on lifts.

Question 10(b): In addition to the indication of a preferred standing location, some lift specifications have required that the entire perimeter of the lift platform have a band of contrasting color. If such a provision is included in these guidelines, the contrast would be defined consistent with the requirement for step tread edges discussed under § 1192.25(b). The Board requests comments on whether such a provision should be included in paragraph (b)(12).

Paragraph (b)(13) concerns handrails and is derived from section 2.2.7 of the *Guideline Specifications.* Because individuals using mobility aids might need to use one hand rather than the other, and persons with hemiplegia have use of only one side and the side would be different while boarding and disembarking, handrails are required on both sides. The configuration of one lift model could make the provision of handrails on both sides interfere with wheelchairs and mobility aids maneuvering into the bus while two lift models could meet the requirement.

Question 11(a): The *Guideline Specifications* recommend a handrail height between 25 and 34 inches. Common accessiblity standards for buildings and facilities specify the height of handrails between 30 and 34 inches. See UFAS § 4.9.4(5) and ANSI A1171.1–1986, § 4.9.4(6). The latter figure is proposed in paragraph (b)(13), especially since the lower handrail height recommended by the *Guideline Specifications* would be out of the range of a standee. A minimum length of 12 inches has been specified to provide a usable grasping surface without the handrail extending into the area needed for wheelchairs and mobility aids to maneuver into the bus. The 12 inch component may be either horizontal or diagonal, with the highest part at or below 34 inches and the lowest part at or above 30 inches. The diagonal configuration corresponds to the case in which the handrail also functions as the step handrail when the lift is stowed. The Board requests comments on these specifications.

Question 11(b): Common accessibility standards for buildings and facilities specify that the diameter of handrails shall be between 1¼ inches and 1½ inches or provide an equivalent gripping surface; and that the clear space between the handrails and the adjoining surface shall be 1½ inches. See UFAS § 4.26.2 and ANSI A117.1—1986, §§ 4.9.4 (3) and (5). The Board requests comments on whether it is feasible to include these specifications in paragraph (b)(13) and analogous provisions regarding handrails on other step entry vehicles without restricting the minimum 32 inch clear width required for open doorways. See §§ 1192.23(c)(8), 1192.29, 1192.77(d), 1192.83(b)(13) and (c)(8), 1192.95(b)(13) and (c)(8), 1192.97(d), 1192.115(d), 1192.125(b)(13) and (c)(8), 1192.133(b)(12) and (c)(8), 1192.135(d), and 1192.155(c).

Question 11(c): The requirement that the handrails withstand 100 pounds force is based on the *Guideline Specifications* which are, in turn, derived from a Canadian lift standard. The Board requests comments on whether this specification is sufficient to ensure stable and safe handrails. The Board also seeks information on whether it is feasible to design handrails to withstand a greater force and the incremental cost of such a design.

Paragraphs (c)(1) through (8) set forth the requirements for ramps to be used as boarding devices. Paragraph (c)(1) includes a ramp design load requirement that is based on the same assumptions as for lifts discussed under paragraph (b)(1). Unlike lifts, however, which are loaded while resting on the ground or at floor height and are essentially uniformly loaded during raising and lowering, ramps are subject to loading in a complex way as the mobility aid moves along the surface. Section 2.2.1 of the *Guideline Specifications for Wheelchair Ramps* specifies a 400 pound load based on the capacity of existing ramps and the fact that the ramp market is small and does not support competition.[10] The Board does not believe that this justifies a reduced capacity. If ramps are used in fixed route service, they should accommodate the same mobility aids that lifts accommodate. The potential load requirements appear to be just as important for ramps as for lifts, especially if assistance is needed on a steep ramp, since this would necessitate another person on the ramp at the same time as the wheelchair and occupant.

The *Guideline Specifications* also require that the load be distributed evenly over a length of 48 inches and the full width of the ramp. In reality, even a 48 inch long mobility aid would not have its weight distributed over the full 48 inches but would instead be concentrated on four or three wheels. The 26 inch square test pallet specified in paragraph (c)(1) is the same as that specified in paragraph (b)(9) for lifts. Allowing the weight to be uniformly distributed over a 26 inch square pallet represents a load significantly less strenuous than would actually occur.

Question 12: Paragraph (c)(2) is analogous to the surface requirements for lifts and is derived from section 2.1.9 of the *Guideline Specifications.* A Board sponsored research project on *Slip Resistant Surfaces* recommends that ramp surfaces have a static coefficient of friction of 0.8. The Board is considering including this value in its proposed guidelines for buildings and facilities. See 56 FR 2310 (January 22, 1991). The Board requests comments on whether this value should be included in paragraph (c)(2) and analogous provisions for other vehicles. See §§ 1192.83(c)(2), 1192.95(c)(2), 1192.125(c)(2), and 1192.133(c)(2).

The requirement for a 30 inch minimum clear width is derived from common accessibility standards for buildings and facilities. See UFAS § 4.2.4.1 and ANSI A117.1–1986, § 4.2.4.1. The provision is also consistent with the requirements for lifts in paragraph (b)(6). The provision for the ramp to accommodate both four wheeled and three wheeled mobility aids is a performance requirement designed to ensure that the surface is a solid platform. Common portable devices consisting of two separate tracks cannot accommodate three wheeled "scooters".

Question 13: Paragraph (c)(3) specifies that the ramp edge be tapered to within ¼ inch or have a beveled edge of no more than ½ inch to be consistent with common accessibility standards for buildings and facilities. See UFAS § 4.5.2 and ANSI A117.1–1986, § 4.5.2. Section 2.1.10 of the *Guideline Specifications* specifies a maximum threshold of ⅝ inch. The Board requests comments on whether the proposed specifications can be achieved.

Paragraph (c)(4) concerns ramp barriers and is derived from section 2.1.11 of the *Guideline Specifications.* The *Guideline Specifications* specify a barrier of 1½ inches but recommend a 2 inch barrier as desirable. The 2 inch requirement is also consistent with common accessibility standards for buildings and facilities. See UFAS § 4.8.7 and ANSI A117.1–1986, § 4.8.7. Unlike lifts, a mobility aid on a ramp is moving and has a higher potential of encountering the barrier so that the 2 inch height is a critical safety factor.

Question 14: Paragraph (c)(5) includes slope requirements derived from common accessibility standards for buildings and facilities. See UFAS § 4.1.6(4)(a), Table 2 and ANSI A117.1–1986, § 4.8.2, Table 3. The slopes must be attained when the ramp is deployed to typical stops in the operating environment. Vehicles operated in rural areas may not have curbs available. In such cases, the ramp may need to be telescoping or folding to attain the proper slopes. The *Guideline Specifications* permit a slope of 1:3 where assistance is provided. Bus ramp tests show that on a ramp with a 1:4 slope the following percentage of subjects needed assistance: 74% of wheelchair and mobility aid users; 73% of individuals with semi-ambulatory disabilities; and 79% of elderly people. *A Study of Public Bus Entry/Exit Systems for Handicapped and Elderly,* Metropolitan Detroit Market Research (August 1978).

This report is not available from NTIS.) Wheelchairs have also been reported to overturn on ramps with a 1:4 slope. *Ramp Design Parameters for Low Floor Transit Buses,* Booz-Allen & Hamilton (April 1980). (This report is not available from NTIS.) The Board requests comments on whether steeper slopes should be permitted if the DOT ADA regulations require drivers to provide assistance to passengers when using a ramp. The Board also seeks information on the incremental costs of providing ramps with the following slopes: (a) 1:4; (b) 1:6; (c) 1:8; and (d) 1:10.

Paragraph (c)(6) is intended to prevent the use of portable ramps which are simply rested against the vehicle floor when being used. Portable ramps are not precluded but they would need to be attached to the vehicle in some fashion while being used. Several designs include quick-release brackets or drop-in pins for temporarily anchoring the ramp to the vehicle during use.

Paragraph (c)(7) ensures that portable ramps are properly stowed in the passenger compartment.

Question 15: Paragraph (c)(8) is analogous to the requirements for lift handrails in paragraph (b)(13), except that ramp handrails are not mandatory. See *Questions 11(b) and (c)* regarding handrail dimensions and force requirements. The handrails must be graspable as the individual begins to board the vehicle and be usable throughout the process. For this purpose, handrails attached to the vehicle may be more appropriate than those attached to the ramp, especially for short ramps. In most vehicles suited for ramp access, the ramp is used only to board wheelchair or mobility aid users because the floor is low enough that persons with semi-ambulatory disabilities, as well as elderly people, find it more convenient to board by using the steps and handrails provided in the entrance. The Board requests comments on whether ramp handrails should be mandatory.

Paragraphs (d)(1) through (6) set forth requirements for securement systems. Paragraph (d)(1) concerns restraint forces and is derived from sections 2.3.1 and 2.3.2 of the *Guideline Specifications for Wheelchair Securement Devices.*[11] The difference between forces required for small and large vehicles recognizes the results of crash tests which show that smaller vehicles experience higher peak deceleration (e.g., 21–25g for small buses versus 8–10g for large buses). The requirement specifies that both the securement device itself and the

[10] Unless otherwise noted, the references to the *Guideline Specifications* in connection with paragraphs (c)(1) through (8) mean the *Guideline Specificaitons for Wheelchair Ramps.*

[11] Unless otherwise noted, the references to the *Guideline Specifications* in connection with paragraphs (d)(1) through (6) mean the *Guideline Specifications for Wheelchair Securement Devices.*

attachment to the vehicle must be capable of withstanding the specified force. These guidelines are intended to provide a base line for restraint requirements. The Board understands that the National Highway Traffic Safety Administration is considering proposing additional regulations in this area.

Securement systems which utilize cargo straps may have little difficulty meeting these requirements. More problematic are the various clamp devices used in some transit systems. The Board, in cooperation with the UMTA-funded Project ACTION, recently published a technical assistance brochure on *Securement of Wheelchairs and Other Mobility Aids on Transit Vehicles* which describes the successful systems used by some transit agencies. The brochure, available free from the Board, is part of the Board's on-going program of technical assistance to help covered entities provide accessible services.

Paragraph (d)(2) concerns location and size of the securement area and is derived from the California specifications. The provision incorporates wheelchair and mobility aid space requirements from common accessibility standards for buildings and facilities. See UFAS § 4.2.4.1 and ANSI A117.1–1986, § 4.2.4.1. A fixed or fold-up seat may overlap a portion of this clear floor space at the front only if a minimum of 9 inches is provided for foot rests to swing under it. See Figure 2. The provision also allows for fold-down seats in the securement area.

Question 16: Paragraph (d)(3) states that the securement system must accommodate common wheelchairs and mobility aids. For the definition of this term, see the appendix to the preamble. This includes power wheelchairs and three wheeled "scooters". As noted above, transit agencies which currently provide fixed route accessible service report that more than 50% of the mobility aid users who ride their systems, use power wheelchairs and three wheeled "scooters". Securement systems which accommodate the range of common wheelchairs and mobility aids exist (e.g., Los Angeles, Seattle, Boston). The Board's technical assistance brochure mentioned above describes these systems. These systems are not "automatic" and may at times require assistance from drivers. Manufacturers are currently designing new securement systems which may better suit the needs of fixed route operators. The Board seeks information regarding such systems and their costs compared to securement systems currently in use.

Paragraph (d)(4) concerns seating orientation of securement systems and is derived from § 2.1.3 of the *Guideline Specifications.* The *Guideline Specifications* do not specify an orientation but the Advisory Panel which developed the document agreed that forward facing seating was safer than side facing. This is supported by all crash test data to date in which even some power wheelchairs secured sideways tend to fold and disintegrate. The occupants of side facing wheelchairs are also subjected to impact with the chair armrests which could cause severe injury. On the other hand, the safest orientation is rear facing, but only if a padded barrier is provided behind the passenger's head and upper torso to prevent whiplash. The barrier would need to be slightly above the wheelchair backrest (approximately 36 inches above the floor); extend to a sufficient height to accommodate a 99th percentile male wheelchair user (approximately 56 inches above the floor); and would need to be at least as wide as the wheelchair backrest (approximately 18 inches wide). This design could present a problem if the padded barrier interfered with driver vision which may occur in some vehicles at particular locations.

Question 17(a): Most large buses provide forward facing securement systems. At least one manufacturer of large transit buses which offers a rear door lift normally provides one forward facing and one rear facing securement system. This configuration permits the individual to choose his or her preferred orientation when both systems are empty and also allows two people traveling together to face each other and carry on a conversation. The Board requests comments on whether this configuration should be permitted. Are there other configurations of one forward facing and one rear facing securement system that are feasible and desirable? (If only one securement system is provided, it would be required to face forward.) If a rear facing securement system is permitted, should a padded barrier be required, and are the specifications discussed above (the padded barrier must be at least 18 inches wide and extend from 36 inches to 56 inches above the floor) adequate? The Board also seeks information on the cost of providing such a padded barrier. For seating orientation of securement systems on vans and small buses, see the discussion under § 1192.133(d).

Question 17(b): Some individuals with disabilities who have poor upper body stability may have difficulty with a forward facing orientation unless an additional restraint system is provided, such as a shoulder harness. The guidelines do not specify seat belts or shoulder harnesses since other passengers are not provided with, or required to use, such devices. In fact, standees, people with large packages or grocery carts, and infants in strollers may be at greater risk in an accident or panic stop situation than persons seated in wheelchairs or mobility aids. Securement systems are required to prevent the wheelchair or mobility aid from becoming a missile in the event of a crash or sudden stop. In such cases, the wheelchair or mobility aid can cause injury to others, as well as the person with a disability. The Board requests comments on whether a seat belt or shoulder harness should be provided for wheelchair and mobility aid users. The use of such devices is an operational issue to be addressed by DOT in its ADA regulations.

Question 18: Paragraph (d)(5) is based on a proposed taxi regulation developed by Montgomery County, Maryland, and specifies that the securement system shall limit the movement of an occupied wheelchair or mobility aid to no more than 2 inches in any direction. Section 4.1.2 of the *Guideline Specifications* specifies a maximum 4 inch movement but that figure was considered excessive by some members of the Advisory Panel which developed the document. From the standpoint of "crashworthiness," a zero movement requirement may be necessary. The National Highway Traffic Safety Administration is considering proposing additional regulations in this area. The Board requests comments on whether the maximum 2 inch movement is appropriate.

Paragraph (d)(6) deals with stowage and is derived from § 2.1.4 of the *Guideline Specifications.* It simply specifies that the securement system shall not cause a tripping hazard and that the securement area should be available for standees when needed.

Section 1192.25 Doors, Steps and Thresholds

This section is based on DOT regulations implementing accessibility requirements of the Urban Mass Transportation Act of 1964, Federal-Aid Highway Act of 1973, and section 504 of the Rehabilitation Act of 1973 (hereinafter referred to as the "UMTA regulations"). See 49 CFR 609.15(f).

Paragraph (a) requires slip resistant surfaces on floors and steps. See *Question 5* regarding whether a static coefficient of friction of 0.6 should be specified for slip resistant surfaces.

Question 19: Paragraph (b) specifies a contrast ratio to quantify the requirement in the UMTA regulations for a "contrasting" step edge. The same ratio is specified in analogous provisions for other step entry vehicles. See §§ 1192.79(b), 1192.99(b), 1192.117(b), 1192.137(b), and 1192.153(b). The ratio is derived from a Board sponsored research project on *Information Systems for Low Vision Persons.* The ratio is also proposed to be included in the accessibility guidelines for buildings and facilities. See 56 FR 2375 (January 22, 1991).
The Board requests comments on whether the ratio is suitable for step edges and, if not, seeks data supporting a different ratio. The Board also seeks information on any costs related to the provision

Question 20: Paragraph (c) contains height requirements for the first front door step and rear door step that are consistent with current transit bus designs to ensure necessary undercarriage clearance on typical urban streets. Common accessibility standards for buildings and facilities specify a maximum 7 inch step riser height and 11 inch tread depth. See ANSI A117.1–1986, § 4.9.2. Steps inside current buses do not conform to these specifications but it is not clear whether this is due to design constraints or simply lack of awareness of the specifications. Riser height and tread depth are not independent variables. There is a limited space for steps in buses, since the steps cannot intrude into the bus vestibule and the maximum bus width is constrained by the roadway. To fit in this limited space, deeper treads require higher risers while shorter risers require shallower treads. Riser height and thread depth are also influenced by the overall floor height. Achieving a lower floor will make it easier to meet the specifications. The Board requests comments on whether a maximum 8 inch riser height and 11 inch tread depth are achievable and any potential costs involved.

Question 21(a): Paragraph (d) requires doors to have a clear width of 32 inches when open to accommodate persons with semi-ambulatory disabilities, as well as lifts or ramps. (The 32 inch door opening accommodates the crutch-tip to crutch-tip stance of a 95% percentile male crutch user.) An exception has been included for buses where a structural member prevents compliance, similar to the provision for lift platform width. The Board requests comments on this specification and whether it should apply to all doors.

Question 21(b): Paragraph (d) also specifies a maximum 15 lbf (66 N) door closing force based on the ANSI standard for power operated doors. See ANSI A156.10–1985, §§ 9.8 and 9.9. The same requirement is included in analogous provisions for other vehicles. See §§ 1192.53(a), 1192.73(a), 1192.93(c), 1192.113(c), and 1192.153(d). Doors that close with too much force or speed can cause persons with semi-ambulatory disabilities to lose their balance. The Board requests comments on whether this specification is appropriate for vehicles and any potential costs involved.

Question 21(c): The guidelines do not specify the height of the doorway in large buses because unlike vans and some small vehicles they are generally designed for standing passengers. Nevertheless, the clearance between the lift in its raised position and the doorway may be restricted for standees boarding with the lift. The height of the opening is constrained by the door opening mechanism which is usually located above the door. The Board seeks information on the maximum doorway height which can be achieved and any potential costs involved.

Section 1192.27 Priority Seating Signs

This section is based on the UMTA regulations. See 49 CFR 609.15(d). A provision has been added to paragraph (a) to respond to complaints that the usually designated aisle-facing seats are not always suitable for some people with semi-ambulatory disabilities. Paragraph (b) requires that securement locations be identified and paragraph (c) contains specifications for the requirement in the UMTA regulations that signs be "clearly legible." The specifications for character height are derived from common accessibility standards used in buildings and facilities for persons with low vision. See UFAS § 4.30.2 and ANSI A117.1–1986, § 4.28.2. The spacing and contrast specifications are derived from a Board sponsored research project on Information Systems for Low Vision Persons. A similar provision is proposed for inclusion in the accessibility guidelines for buildings and facilities. See 56 FR 2376–77 (January 22, 1991).

Section 1192.29 Interior Circulation, Handrails and Stanchions

This section is based on the UMTA regulations. See 49 CFR 609.15(e). Some of the wording is derived from the "White Book" Baseline Specification for Advance Design Buses. See *Question 11(b)* regarding whether it is feasible to include handrail dimensions in this section without restricting the minimum 32 inch clear width required for open doorways.

Question 22(a): Paragraphs (a) and (b) state that handrails and stanchions shall be placed to permit ample turning and maneuvering space for wheelchairs and other mobility aids to enter the bus and reach a securement location from a lift or ramp and not restrict the vestibule space. The Board requests comments on whether further design specifications are needed with respect to maneuvering space and placement of handrails and stanchions and, if so, what the specifications should be.

Question 22(b): Paragraph (b) states that handrails and stanchions used for boarding assistance in the entrance shall have "sufficient clearance" to prevent inadvertent wedging of a passenger's arm. Common accessibility standards for buildings and facilities specify that the clear space between the handrails and the adjoining surface shall be 1½ inches. See UFAS § 4.26.2 and ANSI A1171.1986, § 4.9.4(5). The Board requests comments on whether this specification should be included in paragraph (b) or whether another specification may be more appropriate.

Paragraph (e) adds a provision to respond to a common problem in which stanchions block the footrest of a wheelchair or mobility aid as the user turns into the aisle from a front door lift. This is usually caused by the vertical stanchion immediately behind the driver position which could be terminated at the aisle-facing seat or directed back out of the path. This would not involve a significant design change but is simply often overlooked by specification writers.

Section 1192.3 Lighting

This section is based on the UMTA regulations. See 49 CFR 609.15(g). Paragraph (a) specifies a level of lighting in the front stepwell when the door is opened for boarding or alighting but permits a lower level at other times so as not to cause window reflection which could inhibit the driver's visibility. Paragraph (b) specifies a level of lighting for other stepwells at all times. Doorways in which lifts or ramps are installed would be required to have the same level of lighting on the lift or ramp surface, but only at the top, adjacent to the vehicle floor.

Question 23(a): Paragraph (c) concerns outside lights which illuminate the boarding area beyond the step, lift or ramp edge. The UMTA regulations require an area 3 feet beyond the lower step edge to be illuminated and generally the lighted area extends further. The Board requests comments on whether the specified lighting level

can be achieved 3 feet beyond the outer edge of the lift or ramp.

Question 23(b): As indicated above, the lighting levels specified in this section are derived from the UMTA regulations. The Board seek information on whether these levels are adequate for persons with vision impairments. If the levels are not adequate, the Board requests data on any studies which might support different levels.

Section 1192.33 Fare Box

Question 24(a): This section is based on the UMTA regulations. See 49 CFR 609.15(h). It responds to a common problem where fare boxes are often placed so as to restrict entry by wheelchairs and mobility aids. Based on experience and requests for technical assistance, it appears that the statement that the fare box "not obstruct traffic in the vestibule" is not well understood. The Board requests comments on whether further design specifications are needed with respect to maneuvering space in the vestibule area and fare box placement.

Question 24(b): A transit bus design introduced in the late 1970's had a notch in the dashboard for a recessed fare box but was not used because fare boxes are normally emptied through a side port and recessing the fare box would have interfered with that function. The Board requests comments on the feasibility of requiring the fare box to be flush with or recessed in the dashboard and any incremental costs involved.

Section 1192.35 Public Information System

The ADA requires that the guidelines address communication accessibility for individuals with hearing, speech and visual impairments. See 42 U.S.C. 12204. The legislative history identifies public address systems as a particular area to be addressed. See H. Rept. No. 101–485, pt. 4, at 44.

Question 25(a): Paragraph (a) provides for a public address system to respond to the most common complaint from persons with visual impairments that drivers fail to announce stops in multi-stop service where passengers are free to board and alight at any stop. Providing a speaker outside the door would also permit drivers to announce the line or destination of fixed route vehicles so passengers did not need to block the door to obtain this information. This is especially valuable where several bus lines use the same stop and it may be difficult to see the destination sign. DOT has recognized that "[t]here is substantial merit in routinely announcing all stops (buses in some systems have automatic recording systems that do so)" and has indicated that it is considering "whether these or similar steps should be required as part of the final ADA rule to be published in 1991." 55 FR 40767 (October 4, 1990). The Board intends to coordinate its guidelines with the DOT ADA regulations and requests comments on whether the guidelines should require buses to be equipped with public address systems in conjunction with the DOT ADA regulations requiring that such systems be used. The Board also requests comments on whether the requirement for public address systems should apply only to buses used in fixed route systems since buses used in demanded responsive systems take passengers directly from their origin to destination and typically do not need to announce information about routes and stops.

Question 25(b): Paragraph (b) also permits automated information systems provided they use recorded or digitized human speech. Digitized human speech, in which spoken sounds and words are recorded digitally and rearranged for customized messages, is specified as opposed to synthetic speech which is generated electronically. A Board sponsored research project on *Information Systems for Low Vision Persons* tested visually impaired subjects with recorded, digitized and synthetic speech and concluded that synthetic speech was not yet at the stage of development where it can be recognized easily. The Board requests comments on whether synthetic speech capabilities have improved significantly since 1987 when the research project was conducted and is particularly interested in data on persons with visual and hearing impairments since reduced hearing and vision often accompany one another in older persons. The Board also seeks information on the costs of producing digitized and synthetic speech.

Question 26: Paragraph (b) is intended to address the need for providing information to persons with hearing impairments. A performance requirement is proposed to provide the same or equivalent information in a form usable by persons with hearing impairments. The provision lists assistive listening systems, similar to those required in auditoriums and assembly areas, as a means of meeting the requirement. The most practical assistive listening device for this application would be a magnetic induction loop installed in the bus. At least one tour company has equipped some of its tour buses with such a system which allows persons with hearing aids having a "T-switch" to pick up the magnetic induction directly, eliminating the background noise. These systems are relatively inexpensive and technologically simple. However, such systems do not assist persons with severe hearing impairments or who are deaf. The Board seeks information on other technology which could satisfy the performance requirement, as well as any costs involved. Pending the receipt of this information, the Board has reserved analogous provisions for other modes. See §§ 1192.61(b), 1192.103(b), and 1192.121(b).

Section 1192.37 Stop Request

Typical fixed route transit buses provide pull-cords or tape switches for requesting the driver to stop. These devices may not be assessible to wheelchair and mobility aid users in securement locations. Even when the devices can be reached and activated, the driver may not realize that a wheelchair or mobility aid user is the one who wants to exit, especially from rear door securement locations. This section specifies that the stop request system must be accessible and that the driver be alerted to the need to assist the wheelchair or mobility aid user. Paragraph (a) contains a requirement for audible and visual signals that is designed to accommodate persons with vision or hearing impairments. Currently devices are being installed in buses which ring and cause a "Stop Requested" sign to light in front. The sign is extinguished when the door is opened and the bell is reset. Such devices may benefit everyone. The provision applies to buses used in fixed route, multi-stop service where passengers board and alight at will. The requirement is unnecessary for a demand responsive service, or tour or charter service where the vehicle stops for all passengers at a limited number of points. Paragraph (b) specifies that the activating device (i.e., button, cord, or tape switch) must fall within commonly accepted reach ranges for persons with disabilities. See UFAS § 4.2.5 and ANSI A1171.1 1986, § 4.2.5.

Section 1192.39 Destination and Route Signs

Paragraph (a) is based on the UMTA regulations. See 49 CFR 609.15(i). It permits individuals to see destination and route information from the boarding side, as well as the front of the vehicle. Again, this provision is intended for buses used in fixed route service.

Question 27: Paragraph (b) includes specifications for character height, spacing and contrast based on a Board sponsored research project on

Information Systems for Low Vision Persons which conducted tests primarily indoors with stationary signs. A similar provision has been proposed for inclusion in the accessibility guidelines for buildings and facilities. See 56 FR 2376–77 (January 22, 1991). Persons with low vision have complained about the visibility of bus headsigns, especially when they are used to convey messages other than route and destination information. The Board seeks information on any studies which have been conducted on the illumination and character requirements for persons with low vision with respect to signs on moving vehicles in outdoor lighting.

Subpart C—Rapid Rail Vehicles and Systems

Section 1192.51 General

Paragraph (a) states that rapid rail vehicles required to be accessible by the DOT ADA regulations must comply with the applicable provisions of this subpart. Paragraph (b) provides that if an element or feature of a vehicle is replaced or modified, it must comply with the accessibility requirements for that feature, to the extent feasible.

Section 1192.53 Doorways

This section is based on the UMTA regulations. See 49 CFR 609.17(b). Paragraph (a) specifies the clear width, and closing force and speed for doors. See *Question 21(b)* regarding closing force and speed.

Question 28: A provision has been added to paragraph (a) for end doors between cars to have a 30 inch minimum clearance. In an emergency, passengers are often requested to evacuate one car by passing into another. Passage through the end door may also be necessary when the doors on one car fail to open. This provision is intended to ensure that wheelchair and mobility aid users can also be evacuated in an emergency. It does not necessitate that end doors between cars be usable during normal operation. The Board seeks information on any incremental costs related to this provision.

Question 29: A provision has been added to paragraph (b) stating that, if all vehicles are accessible, then the international symbol of accessibility shall not be displayed on the vehicles. A similar provision is included in analogous sections for other vehicles used in multi-car trains. See §§ 1192.73(b) and 1192.93(e). The Board believes that the international symbol of accessibility should be used only where needed to direct persons with disabilities to an accessible vehicle rather than an inaccessible one. If the symbol is required on all new vehicles, systems which are already accessible and do not have symbols, such as the Washington, DC Metro, would begin to acquire new vehicles with symbols. The presence of a symbol on new vehicles could lead to an assumption that the older vehicles are not accessible. On the other hand, if the symbol is optional for a system with all vehicles currently accessible, it might still acquire new vehicles with the symbol if the manufacturer includes it or if the transit agency neglects to specify "no symbol". This provision attempts to deal with this potential problem by prohibiting the symbol in those cases. The prohibition does not, however, solve the problem of an inaccessible system that purchases new accessible cars which should be identified. As the system eventually replaces its entire fleet, all its vehicles would be accessible and marked by the symbol. The Board requests comments on whether such a system should be required to remove the symbols when all its vehicles are accessible. The Board also seeks information on any potential costs related to such a requirement.

The UMTA regulations require audible warning signals to alert passengers of closing doors. Paragraph (c) adds a requirement for visual signals, such as a flashing light wired to the audible alarm, to alert slower moving passengers that the doors are about to close, especially in high noise operations.

The UMTA regulations require that the gap between the platform and vehicle be minimized. In some instances, a vertical gap of as much as 4 or 5 inches has been allowed. This represents a serious tripping hazard as well as a barrier to wheelchair or mobility aid users. Paragraph (d)(1) specifies that the horizontal gap between a vehicle door at rest and the platform shall be no greater than 3 inches and the height of the vehicle floor shall be plus or minus ⅝ inch of the platform under normal passenger loading conditions. The same specifications are included in analogous provisions for other rail systems. See §§ 1192.73(d), 1192.93(d), 1192.113(d), and 1192.175(a).

Some horizontal gap is necessary between platforms and vehicles to allow for sway as the trains move through stations. This is particularly true in rapid rail with relatively fast and heavy vehicles. The maximum 3 inch horizontal gap is recommended because it is common in new systems, easily achievable, and has not posed significant problems for persons with disabilities during the hundreds of thousands of gap crossings in modern rapid rail systems such as the Washington DC Metro. The absolute value of the gap will change due to vehicle sway (roll) as passengers enter and leave the vehicle so the requirement is for the vehicle at rest.

Question 30(a): Some older rapid rail systems have smaller horizontal gaps. From an accessibility standpoint, smaller gaps are desirable. Construction tolerances may make it difficult to easily attain smaller gaps when building platforms. Some automated guideway transit systems have attached a wooden plank to the face of the platform. Since the wood is relatively soft, as compared to the concrete platform, the plank achieves a closer spacing without the risk of damaging cars as they move through the station. A hard rubber extrusion might serve the same purpose. A vehicle manufacturer once suggested attaching a "fire hose" to the edge of the platform which would be pumped with air when the train stopped for boarding. When the train doors closed, the air stream would be directed by a solenoid controlled valve at right angles to the hose mouth, collapsing the hose. It is not the intent of these guidelines to require such devices, but the Board seeks information on devices or construction techniques which could reduce the horizontal gap in new construction and existing stations in the most cost-effective manner possible. The Board also seeks data on accidents associated with the gap between platforms and vehicles.

Question 30(b): The allowable vertical gap and horizontal gap are closely interrelated. Since the vertical gap can cause the front casters of a wheelchair to turn sideways and drop into the horizontal gap, the larger the vertical gap, the smaller the horizontal gap which can be safely negotiated. Conversely, small vertical gaps permit larger horizontal gaps. The spring suspension of old rapid rail cars often placed an empty car significantly above the platform so that it would be approximately level with the platform under full passenger load. Modern rapid rail cars, however, typically use pneumatic suspension which adjusts the car height to some nominal value with variations in passenger load. The plus or minus ⅝ inch tolerance specified in paragraph (d)(1) ensures that the set value corresponds to the platform height but recognizes that the suspension "give" would allow fluctuation in the value. According to an informal survey conducted by Board staff, rapid rail car manufacturers stated that they can meet a plus or minus ¼ tolerance and that a plus or minus 1 inch tolerance was

"normal" for rapid rail vehicles. The Bay Area Rapid Transit (BART) system in San Francisco reportedly specifies a tolerance of plus or minus ½ inch. There is no information as to how closely that specification is met. The Washington DC Metro system has specified a tolerance of plus or minus ⅝ inch but accepted vehicles considerably out of compliance. The proposed plus or minus ⅝ inch specified here is a compromise between the ¼ inch tolerance manufacturers claimed and variations which may occur in platform construction. The Board requests comments on whether a tolerance of plus or minus ⅝ inch can be achieved. The Board also seeks information on any incremental costs involved in achieving a plus or minus ⅝ inch tolerance as compared to a plus or minus 1 inch tolerance.

The exception in paragraph (d)(2) recognizes that in older systems, platform height uniformity may not have been specified or settling may have occurred. New vehicles used in such older systems are given more latitude in matching platform height. However, it is assumed that such older systems will have a smaller horizontal gap, or some device could be used to achieve the same effect.

Section 1192.55 Priority Seating Signs

This section is based on UMTA regulations. See 49 CFR 609.17(c). The provisions are similar to those for large buses which are discussed under § 1192.27(b).

Section 1192.57 Interior Circulation, Handrails, and Stanchions

This section is based on the UMTA regulations. See 49 CFR 609.17(d). Paragraph (a) requires that handrails and stanchions be provided to assist safe boarding, on-board circulation, seating and standing assistance, and alighting by persons with disabilities. Since vertical stanchions can be reached by seated by short people, they are desirable, especially those which connect to seat backs rather than continuing to the floor, provided that they do not limit necessary floor space.

Paragraph (b) adds space requirements for wheelchairs and mobility aids consistent with common accessibility standards for buildings and facilities. See UFAS § 4.2.4.1 and ANSI A117.1–1986, § 4.2.4.1. The space requirements only specify a clear floor space, not necessarily a designated area. Many modern rapid rail vehicles can easily accommodate a wheelchair or mobility aid in the space normally permitted for standees. This can be immediately inside a door if the doorway width, stanchion placement, and aisle width are properly planned. A stanchion or handrail should be adjacent to the area for grasping since securement systems are not required. Most rapid rail vehicles can accommodate at least one wheelchair or mobility aid at each door.

Question 31: Paragraph (b) also includes a performance requirement which alerts designers to consider the placement of stanchions immediately inside doors to ensure maximum maneuvering space for wheelchair and mobility aid users. The Board requests comments on whether further design specifications are needed with respect to maneuvering space and placement of handrails and stanchions and if so, what the specifications should be.

Question 32: The guidelines do not require securement systems to be provided on rapid rail, commuter rail, and intercity rail vehicles based on a DOT study which concluded that such devices were not needed on rail vehicles where acceleration, deceleration and jerk are minimal. *Elements of the R&D Plan for Improving Transit Accessibility for the Elderly and Handicapped: The Need for Wheelchair Fastening Equipment in Rail Rapid Transit Vehicles*, Alan J. Warshawer Associates (October 1980). (This document is not available through NTIS). Securement systems that have been provided in some rapid rail systems have not been used. There is no "universal" securement system. Most systems require some assistance. In rapid rail, commuter rail, and intercity rail vehicles, however, the driver is not available to provide assistance, even in the front car. The need to exit the vehicle relatively quickly also makes it unlikely that any system could be effectively used. In intercity rail cars, an individual whose wheelchair or mobility aid was secured would be unable to use the accessible restroom if he or she could not independently operate the securement system. The Board requests comments on whether securement systems should be required and, if so, what the system should be to address the practical problems identified. The Board also requests comments on whether a handrail or stanchion should be required immediately adjacent to the wheelchair or mobility aid space.

Section 1192.59 Floor Surfaces

This section is based on the UMTA regulations. See 49 CFR 609.17(e). All floors are required to have slip resistant surfaces. See *Question 5* regarding whether a static coefficient of friction of 0.6 should be specified for slip resistant floor surfaces.

Section 1192.61 Public Information System

Paragraph (a)(1) requires that each vehicle be equipped with a public address system for announcing stations to ensure that such information is available to those who cannot read a platform sign because of position or visual impairment. At least one car in each train is also required to have an external speaker to announce information on arriving trains for persons who have difficulty seeing or reading external signs on vehicles as they enter stations. The Washington DC Metro system has recently begun experimenting with external train speakers. Automated information systems using recorded or digitized human speech and alternative technology that provides equivalent access to information are permitted. See *Question 25(b)* regarding synthetic speech.

Question 33: Paragraph (a)(2) contains an exception to the requirement for external train speakers in the case of systems that provide information on arriving trains through a station-based announcement system. For example, the BART system has light emitting diode (LED) signs which announce arriving trains and their destinations. Intercity train stations often have audible and visual announcement systems. The Board requests comments on whether paragraph (a)(2) should permit an exception only if the station-based announcement system provides information in both audible and visual forms.

Paragraph (b) is reserved to address the need for providing information to persons with hearing impairments. The Board has requested information on this issue under subpart B. See *Question 26*. Pending the receipt of this information, the Board has reserved analogous provisions for other modes. With respect to external train speakers, since the vehicle is not connected to the station, assistive listening technology cannot be used. Assistive listening technology can be used if a station-based announcement system is provided.

Section 1192.63 Between-Car Barriers

Several accidents have occurred in which persons with visual impairments fell from platforms into the space between rapid rail cars. While mobility training, correct cane technique, or properly trained guide dogs should prevent these accidents, the built environment should provide sufficient cues. The majority of persons with visual impairments have some light

vision and often can detect the difference in light from an open doorway and the side of a car. Coupled with the sound of the door opening and use of a cane, or guide dog, to detect the floor of the vehicle, a person with a visual impairment should be able to determine the difference between the door and the space between cars. Under crowded, rush hour conditions, however, when there may be a high noise level, confusion may occur. Also, most new rapid rail cars have windows at the ends which shed light into the space between cars making the gap appear lighter that the car body. Thus, in the rush to board, a cane user may not register the absence of the car floor in time to catch his or her balance. This scenario appears to have been the case in some of the accidents.

Question 34: Several devices could be utilized to provide cues and prevent accidents. Chains or pantograph gates would provide a simple cue which might be detected before stepping far enough forward to lose balance. Many older rapid rail systems provided such barriers between cars. The use of chains was apparently abandoned because they had to be manually disconnected before cars could be separated. Spring loaded pantograph gates on the ends of each car can maintain contact during normal train movement and be designed so that automatic car separation is possible. The Board requests comments regarding the feasibility of using chains, pantograph gates, or other devices such as motion detectors as between-car barriers. The Board also seeks information regarding any costs related to such devices.

An exception is provided for systems which provide platform screens to block the platform edge.

Subpart D—Light Rail Vehicles and Systems

Section 1192.71 General

Paragraph (a) states that light rail vehicles required to be accessible by the DOT ADA regulations must comply with the applicable provisions of this subpart.

Paragraph (b)(i) requires that newly designed and constructed light rail systems operating on dedicated rights-of-way must provide level boarding. The light rail system in Los Angeles operates on a dedicated right-of-way and provides level boarding. New light rail systems planned in St. Paul and Silver Spring/Bethesda (Maryland) will also operate on dedicated right-of-ways and can provide level boarding.

Question 35: Level boarding is the best means of providing accessibility and benefits all passengers. It can significantly reduce station dwell times required for passenger boarding and alighting. In new construction, level boarding can be achieved in some cases when grading the site by piling the dirt fill next to the track and placing a concrete slab on top to coordinate with the level of the train floor. In other cases, it may be necessary to construct a high-level platform. Light rail usually consists of 1 or 2 car trains and the platform length required is shorter than for other types of rail. Mini-high platforms, on the other hand, require extensive ramping systems that could extend more than 1 car length. Mini-high platforms also present operational problems, including having to align the car door with the smaller platform and double stopping if more than one wheelchair or mobility aid user boards or alights from the vehicle at the same stop. Mini-high platforms typically accommodate only 3 or 4 standing passengers and 1 or 2 wheelchair or mobility aid users at a time, and can restrict the normal flow of passengers boarding and alighting from the train thereby increasing station dwell times. The Board requests comments on cost-effective design and construction techniques for providing level boarding for light rail. The Board also seeks information on any existing analyses of costs of constructing high-level platforms and mini-high platforms, and grading sites to provide level boarding. The Board is especially interested in data from systems which provide level boarding.

Paragraph (b)(ii) contains an exception for vehicles designed for, and operated on, pedestrian malls, city streets, or other areas where level boarding is not feasible. The exception permits mini-high platforms, or platform-mounted or car-borne boarding devices (i.e., lifts, ramps or bridge plates). Vehicles are available which have a convertible step which raises for level boarding and lowers for boarding from the street.

Paragraph (c) provides that if an element or feature of a vehicle is replaced or modified, it must comply with the accessibility requirements for that feature, to the extent feasible.

Section 1192.73 Doorways

This section is based on the UMTA regulations. See 49 CFR 609.19(b)(1). Except as noted below, the provisions are similar to those for rapid rail which are discussed under § 1192.53. See the following questions:

- *Question 21(b)* regarding closing force and speed for automatic doors.
- *Question 28* regarding 30 inch minimum clearance for end doors between vehicles in multi-car trains to permit wheelchair and mobility aid users to be evacuated in an emergency.
- *Question 29* regarding prohibiting the display of the international symbol of accessibility if all vehicles are not accessible.
- *Question 30(a)* regarding the horizontal gap between the boarding platform and level entry vehicles.
- *Question 30(b)* regarding the vertical gap between the boarding platform and level entry vehicles.

With respect to coordination of level entry vehicles with the boarding platform, some light rail systems have a substantially larger horizontal gap due to the use of traditional plug-type doors which move outward for a short distance before moving to the side. The use of pocket doors, which slide into pockets in the side of the vehicle and do not need the additional clearance, allows the gap to be the same as for rapid rail. Plug doors could still be used under this provision so long as they clear the platform so that a larger horizontal gap is not produced.

Paragraph (d)(2) permits the use of platform-mounted or car-borne boarding devices (i.e., lifts, ramps or bridge plates) where it is not operationally or structurally possible to meet the horizontal or vertical gap requirements.

Section 1192.75 Priority Seating Signs

This section is based on the UMTA regulations. See 49 CFR 609.19(c). The provisions are similar to those for large buses which are discussed under § 1192.27.

Section 1192.77 Interior Circulation, Handrails and Stanchions

This section is based on the UMTA regulations. See 49 CFR 609.19(d). The provisions in paragraph (b) for step entry vehicles are similar to those for large buses discussed under § 1192.29(b). The provisions in paragraph (c) for level entry vehicles and entrances accessible by lifts, ramps or bridge plates are similar to those for rapid rail discussed under § 1192.57(b). See the following questions:

- *Question 11(b)* regarding whether it is feasible to include handrail dimensions in this section without restricting the minimum 32 inch clear width required for open doorways.
- *Question 22(b)* regarding whether a 1-½ inch clearance between handrails and stanchions used for boarding assistance in the entrance and the driver's barrier is sufficient to prevent inadvertent wedging of a passenger's arm.

• *Question 32* regarding whether securement systems should be required on light rail cars and whether a handrail or stanchion should be required immediately adjacent to the wheelchair or mobility aid seating locations.

• *Question 36:* For vehicles which provide accessibility by means of lifts or ramps, the area for wheelchairs and mobility aids should be as close as possible to the accessible door. For vehicles which have a lift at the front door adjacent to the driver and fare box, care must be taken to ensure that the fare box, driver seat platform, and any vertical stanchions in the vicinity of the door do not restrict maneuvering space for wheelchair and mobility aid users. Paragraph (c) includes a performance requirement which alerts designers to consider the placement of stanchions near doors to ensure maximum maneuvering space. The Board requests comments on whether further design specifications are needed with respect to maneuvering space and placement of handrails and stanchions and, if so, what the specifications should be.

Section 1192.79 Floors, Steps and Thresholds

This section is based on the UMTA regulations. See 49 CFR 609.19(e). Except as noted below, the provisions are similar to those for large buses which are discussed under § 1192.25. See the following questions:

• *Question 5* regarding whether a static coefficient of friction of 0.6 should be specified for slip resistant floor surfaces.

• *Question 19* regarding whether the contrast ratio specified for step edges is suitable.

• *Question 37:* As discussed under § 1192.25(c), common accessibility standards for buildings and facilities specify a maximum 7 inch step riser height and 11 inch tread depth. See ANSI A117.1–1986, § 4.9.2. The 14 inch standard for the first bus front step is consistent with current bus design to ensure necessary undercarriage clearance on typical urban streets. Light rail vehicles, however, do not operate under the same conditions as buses even when tracks are laid on city streets. For this reason, it may actually be possible to achieve a lower first step than for buses. On the other hand, the floor height for light rail vehicles is determined by the wheel trucks and undercarriage which is higher than that for buses, further restricting the choices for steps and risers. The Board requests comments on whether the following specifications are achievable on light rail vehicles and any potential costs involved:

(a) The height from the ground to the first step shall not exceed 14 or 16 inches.

(b) Stair risers shall not exceed 7, 8, or 9 inches.

(c) Stair treads shall be no less than 10 or 11 inches wide.

Section 1192.81 Lighting

This section is based on the UMTA regulations. See 49 CFR 609.19(f). The provisions are similar to those for large buses discussed under § 1192.31. See the following questions:

• *Question 23(a)* regarding whether the specified lighting level can be achieved 3 feet beyond the outer edge of the lift or ramp.

• *Question 23(b)* regarding whether the specified lighting levels are adequate for persons with vision impairments.

Section 1192.83 Mobility aid accessibility.

This section requires new vehicles that do not provide for level boarding to provide access by means of a car-borne or platform-mounted boarding device (i.e., lift, ramp or bridge plate). Except as noted below, the provisions are similar to those for large buses discussed under § 1192.23. See the following questions:

• *Question 3(d)* regarding whether a formula similar to the one used for intercity rail for wheelchair and mobility aid spaces should be permitted for light rail and, if so, what should be the maximum number of spaces provided in any one car.

• *Question 4* regarding whether the proposed performance requirement for the outer safety barrier on the lift platform is adequate or whether a specific test procedure should be incorporated in paragraph (b)(5) and any incremental costs associated with either approach.

• *Question 5* regarding whether a static coefficient of friction of 0.6 should be specified for the platform lift surface.

• *Question 6(a)* regarding the maximum lift platform length which can be accommodated on various models of light rail vehicles and incremental costs associated with longer lift platforms.

• *Question 6(b)* regarding data from local areas on the potential number of wheelchair and mobility aid users who could not be accommodated by: (a) A 44 inch lift platform and (b) a 48 inch lift platform; and the average cost per passenger for paratransit.

• *Question 7* regarding how the side gap between the lift platform and vehicle floor might be eliminated or reduced without also interfering with maneuvering the wheelchair or mobility aid into the vehicle.

• *Question 8* regarding whether the lift platform entrance ramp and threshold specifications in paragraph (b)(8) can be achieved.

• *Question 9* regarding the platform movement specifications in paragraph (b)(10).

• *Question 10(a)* regarding any problems with accommodating standees on lifts and any incremental costs relating to accommodating standees.

• *Question 10(b)* regarding whether a band of contrasting color should be required around the perimeter of the lift platform.

• *Questions 11(a) through (c)* regarding lift handrail dimensions and force requirements.

• *Question 12* regarding whether a static coefficient friction of 0.8 should be specified for ramp surfaces.

• *Question 13* regarding specifications for the ramp edge.

• *Question 14* regarding whether steeper ramp slopes should be permitted.

• *Question 15* regarding whether ramp handrails should be mandatory.

Paragraphs (b)(2)(ii) and (iii) contain two exceptions from the requirements for controls and interlock systems between the lift and the vehicle. The first exception is intended to accommodate a rotary lift. The typical bus lift is deployed with its long dimension perpendicular to the long axis of the bus. A rotary lift pivots into or out of the vehicle and deploys with the long dimension of the platform parallel to the long axis of the vehicle. The advantage of this design is that it requires very little space along side the vehicle and the mobility aid user exits parallel to, and close by, the vehicle. A rotary lift is not practical in typical urban bus operations because the bus cannot always align itself parallel to the curb. Light rail vehicles, on the other hand, operate on a fixed guideway and often load or unload passengers into narrow "islands" between automobile traffic lanes where it may not be feasible to deploy a typical bus lift. A rotary lift could be deployed in such situations. In the boarding process, the mobility aid user boards the lift platform, and the rotary lift rises and pivots while occupied into the passenger compartment to a stowed position. In some cases, the mobility aid user remains on the lift platform for the trip. An exception is provided for this situation from the requirement that lift not be stowed while occupied. The second exception covers platform-mounted lifts, ramps or bridge plates. Those devices are exempted from the requirement that the controls be

interlocked with the car brakes or propulsion system provided that there is some other system to ensure that the vehicle cannot move when the boarding device is being used. For example, if the boarding device can only be operated when the vehicle door is open, and the door has an interlock, this may satisfy the requirement.

Paragraph (c)(6) contains an exception from the requirement that ramps or bridge plates be firmly attached to the vehicle for platform-mounted devices. Such boarding devices are permitted if they are as firmly attached to the platform.

Question 38: Ramp handrails are not mandatory for large buses. See § 1192.239(c)(8). Paragraph (c)(8) also does not require handrails on ramps or bridge plates used with light rail vehicles. Bridge plates, however, may span a larger distance and be higher off the ground than ramps on buses. The Board requests comments on whether handrails should be required on bridge plates. See *Questions 11(b) and (c)* regarding handrail dimensions and force requirements.

As discussed under § 1192.57, the guidelines do not require securement systems to be provided on rapid rail, light rail, commuter rail, or intercity rail vehicles. See *Question 32* regarding whether securement systems should be required on such vehicles; and whether a handrail or stanchion should be required immediately adjacent to the wheelchair or mobility aid space.

Section 1192.85 Between-Car Barriers

This section is similar to the requirement for rapid rail vehicles discussed under § 1192.63 except that step entry light rail vehicles which operate at-grade do not need between-car barriers. See *Question 34* regarding the feasibility of using chains, pantograph gates, or other devices such as motion detectors as between-car barriers.

Question 39: The Board requests comments on whether provisions for public information systems should be specified for light rail vehicles similar to those specified for large buses and rapid rail in §§ 1192.35 and 1192.61. See the following questions:

- *Question 25(a)* regarding whether the guidelines should require vehicles to be equipped with public address systems in conjunction with the DOT ADA regulations requiring that such systems be used.
- *Question 25(b)* regarding use of synthetic speech.
- *Question 33* regarding whether an exception should be permitted for station-based announcement systems only if it provides information in both audible and visual forms.

Subpart E—Commuter Rail Cards and Systems

Section 1192.91 General

Paragraph (a) states that commuter rail cars required to be accessible by the DOT ADA regulations must comply with the applicable provisions of this subpart.

Paragraph (b) provides that if an element or feature of a vehicle is replaced or modified, it must comply with the accessibility requirements for that feature, to the extent feasible.

Paragraph (c) recognizes that level boarding is the best means of providing accessibility and benefits all passengers. However, it may not be feasible to provide high-level platforms on systems where commuter rail trains use the same tracks as freight trains. Freight trains are typically wider than commuter rail trains which means that high-level platforms would need to be set back to allow the passage of the wider trains. For the reasons discussed under § 1192.71(c) with respect to light rail, level boarding has significant advantages over mini-high platforms and car-borne, platform-mounted, or portable lifts. Where a platform set-back is required, it is still preferable to provide level boarding from a platform approximately at the same height as the car floor by means of a car-borne or platform-mounted bridge plate. The actual platform set-back required may be less than expected. The typical center-to-center spacing between parallel tracks, one for each direction, or between main track and side track is 13 feet. This means that the maximum clearance from the center of the track to the side is 6.5 feet. For a typical 10 foot wide passenger car (5 feet from center of track), the set-back clearance is 18 inches or less, a distance which can easily be crossed by a bridge plate. On rare occasions, a freight train may need to transport a load wider than this clearance would permit but, because such a wide load would preclude passing other trains traveling in the opposite direction or on side tracks, advance planning is required to clear all adjacent tracks. Amtrak engineers reported, during discussions with the House Energy and Commerce Committee, that the problem had been solved in some stations by providing a detachable platform over-hang which could be removed if such a wider load needed to be transported. Reportedly, in the several years in which such stations have been in operation, the over-hang has never had to be removed.

Section 1192.93 Doorways

Except as noted below, the provisions in this section are similar to those for rapid rail which are discussed under § 1192.53. See the following questions:

- *Question 21(b)* regarding closing force and speed for automatic doors.
- *Question 28* regarding 30 inch minimum clearance for connecting doors between cars to permit wheelchair and mobility aid users to be evacuated in an emergency.
- *Question 29* regarding prohibiting the display of the international symbol of accessibility if all vehicles are accessible.

The requirement in paragraph (a) that the connecting doors between single level cars have a minimum clear opening of 30 inches for emergency passage does not imply Board endorsement or acceptance of persons with disabilities moving between cars under normal circumstances, especially when the train is moving. As further discussed in connection with intercity rail under § 1192.113, as a general rule movement between cars is an unsafe practice and is permitted under the ADA only for the purposes of providing access to a single level dining car. The provision does not apply to bi-level cars because the connecting doors are always on the upper level and the ADA does not require access to the upper level for wheelchair and mobility aid users.

Paragraph (b) does not require that all doors be accessible to wheelchair and mobility aid users, unless level boarding is provided. Rather, it requires at least one door on each side of the car from which passengers normally board to provide access to wheelchair and mobility aid users. The use of a designated door rather than the door through which other passengers board is permitted. A 32 inch passageway is required only from the accessible door to the seating spaces provided for wheelchair and mobility aid users. The ADA does not require all aisles or passageways to be accessible to wheelchair or mobility aid users. See H. Rept. 101–485, pt. 4, at 46.

Question 40: Sometimes intercity rail cars are used for commuter rail service. Those cars generally have side doors which open onto a vestibule which is 31 inches wide. The passenger compartment is usually separated from the vestibule by a power operated sliding door with a clear opening of 30 or 31 inches. A wheelchair or mobility aid user entering the side door must make a right-angle turn in the vestibule to pass through the sliding door and into the

passenger compartment. This turn is extremely difficult for a manual wheelchair user to negotiate, and virtually impossible for a power wheelchair or mobility aid user. The minimum 42 inch width specified for the vestibule in paragraph (b) is consistent with common accessibility standards for buildings and facilities. See UFAS § 4.13.6, Figures 25 (e) and (f), and ANSI A117.1—1986, § 4.13.6, Figures 25 (e) and (f). Amtrak has indicated that the bulkhead which separates the vestibule from the passenger compartment could be set back further in new cars to provide a wider vestibule. If the spacing between seat rows is reduced by a fraction of an inch, it may be possible to widen the vestibule without any loss of seats. The Board requests comments on the feasibility of widening the vestibule to 42 inches without reducing seating capacity. The Board also requests comments on the feasibility of widening the sliding door between the vestibule and the passenger compartment to 32 inches and any incremental costs involved.

Question 41: Paragraph (c) requires audible and visual warning signals on automatic doors to alert passengers to closing doors, just as required for rapid rail and light rail vehicles. The legislative history of the ADA specifically includes automatic door closing alarms as a feature to be required on accessible rail cars. See H. Rept. 101–485, pt. 4, at 44. The use of such systems may not be a common practice for commuter rail. The Board requests comments whether this requirement presents any special problems for commuter rail vehicles and any costs involved.

Paragraph (d)(2) provides that where platform set-backs do not allow the specified horizontal and vertical gaps to be achieved, a car-borne, platform-mounted, or portable boarding device (i.e., lift, ramp or bridge plate) must be provided.

Section 1192.95 Mobility Aid Accessibility

This section requires new vehicles that do not provide for level boarding to provide access by means of a car-borne, platform-mounted, or portable boarding device (i.e., lift, ramp or bridge plate). Except as noted below, the provisions are similar to those for buses discussed under § 1192.23. See the following questions:

- *Question 3(d)* regarding whether a formula similar to the one used for intercity rail for wheelchair and mobility aid spaces should be permitted for commuter rail and, if so, what should be the maximum number of spaces provided in any one car.
- *Question 4* regarding whether the proposed performance requirement for the outer safety barrier on the lift platform is adequate or whether a specific test procedure should be incorporated in paragraph (b)(5) and any incremental costs associated with either approach.
- *Question 5* regarding whether a static coefficient of friction of 0.6 should be specified for the platform lift surface.
- *Question 8* regarding whether the lift platform entrance ramp and threshold specifications in paragraph (b)(8) can be achieved.
- *Question 9* regarding the platform movement specifications in paragraph (b)(10).
- *Question 10(a)* regarding any problems with accommodating standees on lifts and any incremental costs relating to accommodating standees.
- *Question 10(b)* regarding whether a band of contrasting color should be required around the perimeter of the lift platform.
- *Questions 11 (a) through (c)* regarding lift handrail dimensions and force requirements.
- *Question 12* regarding whether a static coefficient friction of 0.8 should be specified for ramp surfaces.
- *Question 13* regarding specifications for the ramp edge.
- *Question 14* regarding whether steeper ramp slopes should be permitted.
- *Question 15* regarding whether ramp handrails should be mandatory.

Hand-operated portable lifts are sometimes used for commuter rail. Paragraph (a)(2) requires such lifts to meet applicable requirements of this section. The requirements for a manual back-up for power failure, brake or propulsion system interlocks, and other requirements related to power operated boarding devices clearly do not apply to hand-operated portable lifts. The design load requirement does apply to such lifts.

Question 42: Paragraph (b)(2) exempts platform-mounted and portable lifts from the requirement that the controls be interlocked with the car brakes or propulsion system provided that there is some other system to ensure that the train cannot move when the lift is in use. A similar provision is included in light rail. See § 1192.83(b)(2)(iii). The need for some type of system to prevent the train from moving may be more critical for commuter rail in which doors often do not have any type of interlock and are physically closed by personnel. There have been instances where trains began moving before passengers had completed boarding. Sometimes a whistle or bell announces preparation to move but this may not be heard by persons with hearing impairments. Presumably, the portable lift will be operated by train personnel who will be aware that the train is about to move this may not be sufficiently fail-safe. The Board requests comments on types of systems that could be used and any costs involved.

Question 43: The ADA does not require commuter rail and intercity rail operators to provide paratransit for wheelchair and mobility aid users who cannot be accommodated by the lift platform length. This raises the question whether the lift length specified for commuter rail and intercity rail should be longer than for other transit modes. The Board requests comments on the maximum platform length which can be accommodated on vehicles with car-borne lifts and the incremental cost of requiring a longer lift platform. The Board also seeks information on the platform length of platform-mounted and portable lifts currently in use.

With respect to handrails on bridge plates, the Board has the same concerns as with light rail vehicles whether handrails should be required. See *Question 39* regarding handrails on bridge plates.

As for seating locations, sufficient clearances must be provided to permit wheelchair and mobility aid users to reach the location. *See Question 32* regarding whether securement systems should be required on rapid rail, light rail, commuter rail, or intercity rail vehicles; and whether a handrail or stanchion should be required immediately adjacent to the wheelchair or mobility aid space.

Section 1192.97 Interior Circulation, Handrails and Stanchions

Handrails and stanchions are not required in commuter rail cars to the same extent as in other types of vehicles. Commuter rail cars often start slower than rapid rail or light rail vehicles and have longer dwell times in stations to permit people to find a seat. Handrails and stanchions are required in the entrances to step entry vehicles since this is the area where most accidents occur. See *Question 11(b)* regarding whether it is feasible to include handrail dimensions in this section without restricting the minimum 32 inch clear width required for open doorways.

Where handrails or stanchions are provided at other places, they must be sufficient to permit safe on-board

circulation and seating and standing assistance. In commuter rail systems, where standees are likely to be present, a sufficient number of handrails and stanchions is critical. Seating and standing assistance may be provided by the armrests on traditional coach seats rather than special or extra handrails.

Question 44: Paragraph (a) states that where handrails and stanchions are provided, they shall be placed to permit ample turning and maneuvering space for wheelchairs and other mobility aids to enter the vehicle and reach a seating location. The Board requests comments regarding whether further design specifications are needed with respect to maneuvering space and placement of handrails and stanchions and, if so, what the specifications should be.

Section 1192.99 Floors, Steps and Thresholds

Except as noted below, this section is similar to that for large buses which is discussed under § 1192.25. See the following questions:

- *Question 5* regarding whether a static coefficient of friction of 0.6 should be specified for slip resistant floor surfaces.
- *Question 19* regarding whether the contrast specified for step edges is suitable.

Question 45: As discussed under § 1192.25(c), common accessibilty standards for buildings and facilities specify a maximum 7 inch step riser height and 11 inch tread depth. See ANSI A117.1–1986, § 4.9.2. The floor height of commuter rail cars is determined by the wheel trucks and undercarriage which is higher than that for buses. The Board requests comments on whether the following specifications are achievable on commuter rail cars and any potential costs involved:

(a) The height from the ground to the first step shall not exceed 14 or 16 inches.

(b) Stair risers shall not exceed 7, 8, or 9, inches.

(c) Stair treads shall be no less than 10 or 11 inches wide.

The Board also requests comments on whether the use of an auxilliary step, often put into place by train personnel, is adequate.

Section 1192.101 Lighting.

This section is similar to that for large buses discussed under § 1192.31. See the following questions:

- *Question 23(a)* regarding whether the specified lighting level can be achieved 3 feet beyond the outer edge of the lift, ramp or bridge plate.
- *Question 23(b)* regarding whether the specified lighting levels are sufficient for persons with vision impairments.

Section 1192.103 Public Information System

This section is similar to that for rail vehicles discussed under § 1192.61, except that external speakers are not required. Paragraph (b) is intended to address the need for providing information to persons with hearing impairments. The Board has requested information on this issue under subpart B. Pending the receipt of this information, the Board has reserved analogous provisions for other modes.

Section 1192.105 Priority Seating Signs

This section is similar to that for large buses discussed under § 1192.27.

Section 1192.107 Restrooms

The ADA does not require a commuter rail car to provide an accessible restroom if a restroom is not provided for other passengers. See 42 U.S.C. 12162(b)(2)(B)(i). The specifications for the water closet, grab bars, and faucets and flush controls are based on common accessibility standards for buildings and facilities. See UFAS §§ 4.16.3, 4.16.5, 4.17.6, and 4.27.4; and ANSI A117.1–1986, §§ 4.16.3, 4.16.5, 4.17.6, and 4.25.4.

Question 46: The specifications for clear floor space and door width are derived from the current Amtrak restroom design which is constrained by the layout of the car. For a discussion of the Amtrik restroom, see § 1192.123. The specifications assume that the restroom is placed at the end of the car, near the entrance stepwell, and across from an inaccessible restroom, as is common in intercity rail cars. However, if the restroom is placed elsewhere, there may be more room to provide better accessibility. The specifications are the absolute minima and many wheelchair and mobility aid users, especially those with power devices, will experience difficulty using it. The Board requests comments on whether other restroom configurations are feasible and, if so, whether any loss of seats would result from such designs.

Subpart F—Intercity Rail Cars and Systems

Section 1192.111 General

This section contains scoping provisions based on the specific requirements of the ADA. See 42 U.S.C. 12162(a) (2) through (4). See also 49 CFR 37–87.

Paragraphs (a) (1) and (d) concern single-level passenger coaches and food service cars. The ADA requires that intercity rail trains provide a number of spaces for parking wheelchairs (for individuals who wish to remain in their wheelchairs) and a number of spaces for folding and storing wheelchairs (for individuals who wish to transfer to a seat in single-level passenger coaches and food service cars) equal to: (a) One half the number of coaches in the train by July 26, 1995; and (b) the total number of coaches in the train by July 26, 2000. See 42 U.S.C. 12162(a)(3). Not more than two of each type of spaces may be located in any coach or food service car. Id. Each coach or food service car on which wheelchair spaces are provided must have a wheelchair accessible restroom. Id. These requirements are intended to minimize the loss of seats. For instance, in a train with 10 single-level passenger coaches, a total of 10 wheelchair seating locations and 10 spaces for storing folded wheelchairs would have to be provided by July 2000. Instead of placing one of each type of spaces in each of the 10 coaches, two of each type of spaces could be placed in 5 coaches for the same total number of spaces and only those 5 coaches would be required to have wheelchair accessible restrooms. If a longer train will divide into two shorter trains along a route, a sufficient number of such wheelchair accessible coaches would have to be included on the longer train to ensure that the appropriate number of wheelchair accessible coaches are on each of the shorter trains when they divide. Although all new coaches do not necessarily have to be wheelchair accessible, as explained in the legislative history of the ADA, they must incorporate accessibility features such as adequate doorway clearances, lighting, slip-resistant floors and public information systems for individuals with semi-ambulatory disabilities and individuals with hearing or vision impairments. See H. Rept. 101–485, pt. 4, at 46.

Paragraph (a)(2) concerns single-level dining cars and lounge cars. These cars are not entered directly from the platform but rather through the vestibule of an adjoining car. The ADA requires that, unless not practical, an accessible coach car must be placed adjacent to the end of the dining car so that individuals with disabilities could enter the coach car and go through the vestibule to the dining car. See 42 U.S.C. 12162(a)(4)(A). The issue of safe passage between cars was the subject of considerable discussion at a series of meetings among staff of the House Energy and Commerce Committee, Amtrak officials, and disability representatives, at which Board staff provided technical assistance. Amtrak

officials had previously testified at the hearing before the Committee that movement between cars presented serious problems, especially when trains were moving through switches. Nevertheless, the discussions concluded that passage into dining cars was necessary since they do not have doors opening to platforms. As the House Energy and Commerce Committee Report explains:

> * * * this provision represents the *only* instance in the legislation in which the right of a passenger who uses a wheelchair to pass between cars is recognized. During consideration of the bill, considerable attention was devoted to the question of whether the movement of a passenger who uses a wheelchair through the vestibule connecting adjacent cars should be permitted. In the Committee's judgment, such movement as a general rule constitutes an unsafe practice that can seriously endanger the passenger and in turn subject Amtrak or other passenger railroads to major lawsuits. Thus, it is not the intention of the bill to require any railroad or commuter authority to provide access between cars on a train for passengers using wheelchairs, except in the single instance described in this paragraph. In that single instance, the right of a disabled passenger to have an opportunity to eat in an integrated setting appeared to the Committee, on balance, to outweigh the safety concerns, particularly because the movement between cars is likely to occur when the train is stopped. H. Rept. 101–485, pt. 4, at 48–49 (emphasis in original).

The ADA also requires that space be available to park a wheelchair at a table and to store a folded wheelchair if the person wishes to transfer to a seat. See 42 U.S.C. 12162(a)(4)(A).

Paragraph (a)(3) concerns bi-level dining cars. These cars can only be entered from the upper level of an adjacent bi-level car. (The lower level is occupied by food preparation equipment). The ADA does not require bi-level dining cars to be wheelchair accessible. 42 U.S.C. 12162(a)(2)(D). However, as explained in the legislative history, they must incorporate accessibility features such as adequate doorway clearances, slip-resistant floor surfaces, and public information systems for individuals with semi-ambulatory disabilities and individuals with hearing and vision impairments. See H. Rept. No. 101–485, pt. 4, at 46.

Paragraph (a)(4) concerns bi-level lounge cars which are often placed in trains which also have bi-level dining cars. The lower level of a bi-level lounge car can be entered directly from the platform and normally has a restroom and an area where drinks are served. The ADA requires that, whenever a new bi-level lounge car is operated in conjuction with a bi-level dining car, table service essentially equivalent to that which other passengers could obtain in the dining car be provided to persons with disabilities in the lower level lounge car. See 42 U.S.C. 12162(a)(4)(B).

Paragraph (a)(5) concerns restrooms. The ADA requires that single-level passenger coaches and food service cars with wheelchair spaces provide a wheelchair accessible restroom. See 42 U.S.C. 12162(a)(3)(D). Single-level dining cars, single-level lounge cars, and the lower level of bi-level lounge cars are required to provide wheelchair accessible restrooms only if restrooms are provided for all passengers. See U.S.C. 12162(a)(2)(C).

Paragraph (a)(6) concerns sleeper cars and is consistent with Amtrak's practice of providing a wheelchair accessible sleeping compartment in each new sleeping car.

Paragraph (b) is similar to the provisions for light rail and commuter rail and recognizes that level boarding is the best means for providing accessibility and benefits all passengers. For the reasons discussed under § 1192.91(c) with respect to commuter rail, it may not be feasible to provide high level platforms where intercity rail trains share tracks with freight trains in which case a car-borne, platform-mounted, or portable boarding device (i.e., lift, ramp or bridge plate) must be provided.

Paragraph (c) provides that if an element or feature of a car is replaced or modified, it must comply with the accessibility requirements for that feature, to the extent feasible.

Section 1192.113 Doorways

Except as noted below, the provisions in this section are similar to those for rapid rail and commuter rail which are discussed under §§ 1192.53 and 1192.93. See the following questions:

- *Question 21(b)* regarding closing force and speed for automatic doors.
- *Question 29* regarding prohibiting the display of the international symbol of accessibility if all cars are accessible.
- *Question 40* regarding the feasibility of widening the vestibule to 42 inches without reducing seating capacity and widening the sliding door between the vestibule and the passenger compartment to 32 inches.
- *Question 47:* As discussed under § 1192.111(a)(2), the ADA permits passage between cars by wheelchair users to provide access from a single-level passenger coach into a single-level dining car. Board staff have discussed the design of end doors with Amtrak designers and it appears that a 30 inch clear opening is attainable. The Board requests comments if a 32 inch opening can be achieved and any incremental costs involved.

Paragraph (b) does not require that all doors be accessible to wheelchair users, unless level boarding is provided. Rather, with respect to cars required to be accessible by § 1192.111(a) where wheelchair seating locations are provided, at least one door on each side of the car from which passengers normally board must be accessible. The 32 inch passage specified in paragraph (b) is required only from the accessible door to accessible spaces in the car, such as wheelchair seating locations, accessible restroom, accessible table, and accessible sleeping compartment. The ADA does not require all aisles or passageways to be accessible to wheelchair users. See H. Rept. 101–485, pt. 4, at 46.

Paragraph (d)(2) provides that where platform set-backs do not allow the specified horizontal and vertical gaps to be achieved, a car-borne, platform-mounted, or portable boarding device (i.e., lift, ramp or bridge plate) must be provided.

Paragraph (e) contains a provision that appropriate signage indicate which accessible doors are adjacent to an accessible restroom, if applicable.

Section 1192.115 Interior Circulation, Handrails and Stanchions

This section is the same as that for commuter rail which is discussed under § 1192.97. See *Question 11(b)* regarding whether it is feasible to include handrail dimensions in this section without restricting the minimum 32 inch clear door width required for open doorways.

Question 48: Paragraph (a) states that where handrails and stanchions are provided, they shall be placed to permit ample turning and maneuvering space for wheelchairs and other mobility aids to enter the car and reach a seating location. The Board requests comments regarding whether further design specifications are needed with respect to maneuvering space and placement of handrails and stanchions and, if so, what the specifications should be.

Section 1192.117 Floors, Steps and Thresholds

Except as noted below, this section is similar to that for large buses which is discussed under § 1192.25. See the following questions:

- *Question 5* regarding whether a static coefficient of friction of 0.6 should be specified for slip resistant floor surfaces.
- *Question 19* regarding whether the contrast specified for step edges is suitable.

Question 49: As discussed under § 1192.25(c), common accessibility standards for buildings and facilities specify a maximum 7 inch step riser height and 11 inch tread depth. See ANSI A117.1—1986, § 4.9.2. The floor height for intercity rail cars is determined by the wheel trucks and undercarriage which is higher than that for buses. The Board requests comments on whether the following specifications are achievable on intercity rail cars and any potential costs involved:

(a) The height from the ground to the first step shall not exceed 14 to 16 inches.

(b) Stair risers shall not exceed 7, 8, or 9 inches.

(c) Stair treads shall be no less than 10 or 11 inches wide.

The Board also requests comments on whether the use of an auxiliary step, often put into place by train personnel, is adequate.

Section 1192.119 Lighting

This section is similar to that for large buses discussed under § 1192.31. See the following questions:

- Question 23(a) regarding whether the specified lighting level can be achieved 3 feet beyond the outer edge of the lift, ramp or bridge plate.
- *Question 23(b)* regarding whether the specified lighting levels are sufficient for persons with vision impairments.

Section 1192.121 Public Information System

This section is similar to that for rapid rail vehicles discussed under §1192.61, except that external speakers are not required. Amtrak normally provides public address systems on its cars.

Question 50: Paragraph (b) is intended to address the need for providing information to persons with hearing impairments. The Board has requested information on available technology. See *Question 26.* Pending receipt of this information, the Board has reserved analogous provisions for other modes. The Board requests comments on whether an assistive listening system would operate in a train where power is provided by under-car electric traction motors, as in some portions of the Northeast corridor, which might cause significant interference with a magnetic induction system.

Section 1192.123 Restrooms

This section is the same as that for restrooms in commuter rail cars discussed under § 1192.107. See *Question 46* regarding whether other restroom configurations are feasible and, if so, whether any loss of seats would result from such designs. The current Amtrak restroom has been engineered to fit within the car and provide a passageway between the restrooms of 33 inches to the passenger seats. Since the minimum passable aisle width is 32 inches, a wider restroom may not be feasible without some creative design. Common accessibility standards for buildings and facilities specify a minimum 36 inch width for an accessible route. See UFAS § 4.3.3 and ANSI A117.1—1986, § 4.3.3. The 39 inch clear opening on the side wall doorway is to allow the maximum turning clearance considering the limited interior space. To provide more space, the restroom itself would probably need to be lengthened which would displace more seats, one of the most critical concerns expressed by the House Energy and Commerce Committee during the many meetings on this issue. The compromise to permit wheelchair seating locations to be grouped so that not all cars would have an accessible restroom was an effort to minimize the loss of seats. Amtrak has introduced fold-up seats which can be used in the wheelchair seating location so the loss of seats is not as severe as anticipated.

Section 1192.125 Mobility Aid Accessibility

Except as noted below, the provisions are similar to those for large buses which are discussed under § 1192.23 and includes some provisions for commuter rail which are discussed under § 1192.95. See the following questions:

- Question 4 regarding whether the proposed performance requirement for the outer safety barrier on the lift platform is adequate or whether a specific test procedure should be incorporated in paragraph (b)(5) and any incremental costs associated with either approach.
- Question 5 regarding whether a static coefficient of friction of 0.6 should be specified for the platform lift surface.
- Question 8 regarding whether the lift platform entrance ramp and threshold specifications in paragraph (b)(8) can be achieved.
- Question 9 regarding the platform movement specifications in paragraph (b)(10).
- Question 10(a) regarding any problems with accommodating standees on lifts and any incremental costs relating to accommodating standees.
- Question 10(b) regarding whether a band of contrasting color should be required around the perimeter of the lift platform.
- Question 11(a) through (c) regarding lift handrail dimensions and force requirements.
- Question 12 regarding whether a static coefficient friction of 0.8 should be specified for ramp surfaces.
- Question 13 regarding specifications for the ramp edge.
- Question 14 regarding whether steeper ramp slopes should be permitted.
- Question 15 regarding whether ramp handrails should be mandatory.
- Question 42 regarding types of systems that could be used to prevent the train from moving when the lift is in use.
- Question 43 regarding the maximum platform length which can be accommodated on cars with car-borne lifts, and the length of platform-mounted and portable lifts currently in use.

With respect to handrails on bridge plates, the Board has the same concerns as with light rail vehicles whether handrails should be required. See *Question 39* regarding handrails on bridge plates.

The seating requirement in paragraph (d) apply to the extent required by § 1192.111 (a) and (d). An accessible route with a minimum clear width of 32 inches must be provided from doorways to the seating locations. See *Question 32* regarding whether securement systems should be required on rapid rail, light rail, commuter rail, and intercity rail vehicles; and whether a handrail or stanchion should be required immediately adjacent to the wheelchair or mobility aid space.

Section 1192.127 Sleeping Compartments

Question 51: Amtrak currently provides one accessible sleeping compartment on all new sleeping cars. This provision preserves that practice. Paragraph (a) requires that the sleeping compartment be designed so that a wheelchair or mobility aid user can enter the and use the compartment. See Figure 4. Paragraph (b) requires that the sleeping compartment have an accessible restroom complying with § 1192.123(a). Paragraph (c) requires that controls and operating mechanisms be accessible consistent with common accessibility standards for buildings and facilities. See UFAS § 4.27.3 and 4.27.4, and ANSI A 117.1–1986 §§ 4.25.3 and 4.25.4. The Board requests comments on whether other requirements such as interior space and layout should be specified consistent with the design constraints imposed by the sleeping car and, if so, what the requirements should be. The Board also requests comments on what requirements should be specified for persons who are deaf or hearing impaired and whether an

additional sleeping compartment should be equipped for such persons.

Subpart G—Vans and Small Buses

Section 1192.131 General

Paragraph (a) states that vehicles with a gross vehicle weight rating (GVWR) less than 19,500 pounds which are required to be accessible by the DOT ADA regulations must comply with the applicable provisions of this subpart. As discussed under § 1192.21, the proposed GVWR division generally separates typical urban transit buses from vans and small buses. See *Question 1* regarding whether another division would be more useful such as passenger capacity, type of lift (i.e., active or passive), or type of service (i.e., fixed route or demand responsive). Vans and small buses are frequently used for demand responsive service but are also used for fixed-route service, especially in rural and small urban areas. This subpart does not include requirements for public address or stop request systems because the small size of the vehicles makes such requirements unnecessary. Such requirements are also not applicable if the vehicles are operated in demand responsive service.

Question 52: The Board requests comments on whether trams, motorized carts and powered vehicles pulling one or more trailer units used for shuttle service at such places as malls, airports, or amusement parks should be covered by subpart G or subpart I. If the vehicle consists of several units as in the case of a powered unit pulling one or more trailer units, would the GVWR be determined based on each unit or the vehicle as a whole. Should these vehicles be covered as a separate category under subpart I?

Paragraph (b) provides that if an element or feature of a vehicle is replaced or modified, it must comply with the accessibility requirements for that element or feature, to the extent feasible.

Section 1192.133 Mobility Aid Accessibility

This section sets forth the requirements for mobility aid accessibility for vans and small buses.

Question 53: Paragraph (a) provides that at least one space must be provided on vans and small buses for wheelchair and mobility aid users. For a discussion of the ADA legislative history regarding spaces for wheelchair and mobility aid users, see *1192.23(a).*

The Board requests comments on the factors that affect the number of spaces provided on vans and small buses for wheelchair and mobility aid users, and under what circumstances it would be desirable to provide more than one space. The Board also seeks information on the impact of providing additional spaces for wheelchair and mobility aid users on overall seating capacity for various types of vehicles.

Paragraphs (b) (1) through (12) set forth the requirements for lifts to be used as boarding devices. Paragraph (b)(1) specifies design load and is derived from 2.3.1, 2.3.2, and 2.4.1.1 of the *Guideline Specifications for Active Wheelchair Lifts.*[12] The provision is the same as that for large buses which is discussed under § 1192.23(b)(1).

Question 54: Paragraph (b)(2) concerns controls and interlock systems, and is derived from sections 2.5.4.3, 2.5.4.4, 2.5.8.3, and 2.5.8.4 of the *Guideline Specifications.* The *Guideline Specifications* permit the substitution of a warning light for an interlock system since active lifts are typically used in demand responsive systems where the driver can offer assistance in boarding and alighting and because vans rarely have the type of interlock systems as large buses. The Board has not adopted this option because it introduces an element of possible human error into a safety factor. It is not the intent of these guidelines to require vans and small buses to have the same type of interlock systems as large buses. Other types of interlock systems may be appropriate. Many vans have a switch in the steering column which prevent certain electrical systems from being operated unless the transmission is engaged in "park" and the lift electrical system could be tied into that switch. The ignition key usually cannot be removed unless the transmission is engaged in "park". If the ignition key is used to operate the lift, the vehicle could not be moved while the lift is operated. Some vans have lights which flash when the emergency brake is engaged. A solenoid could be wired to the lights and the lift so that lift could not be operated unless the emergency brake is engaged. The Board requests comments on whether these or other systems could be incorporated in vans and small buses at reasonable cost.

The phrase "where provided" has been added when describing controls in paragraph (b)(2) because many active lifts have manually operated portions of the cycle. An exception has also been included to allow the use of rotary lifts which are designed to be stowed while the platform is occupied. Rotary lifts are further discussed under § 1192.83(b)(2).

Paragraph (b)(3) deals with emergency operation and is derived from section 2.5.7 of the *Guidelines Specifications.* This provision is the same as that required for large buses which is discussed under § 1192.23(b)(3).

Paragraph (b)(4) deals with power or equipment failure and is derived from section 2.4.2 of the *Guideline Specifications.* This provision is identical to that for large buses which is discussed under § 1192.23(b)(4).

Paragraph (b)(5) concerns safety barriers and is derived from sections 2.2.6.1 through 2.2.6.5 of Option A of the *Guideline Specifications.* This provision is identical to that for large buses which is discussed under § 1192.23(b)(5). See *Question 5* regarding whether the performance requirement for the outer safety barrier is adequate or whether a specific test procedure should be incorporated in paragraph (b)(5). Option B of the *Guideline Specifications* provides a lesser requirement for safety barriers together with a set of operating procedures designed to reduce the potential for accidents. The Board has not adopted Option B for several reasons. First, these guidelines cannot specify operating procedures. Second, Option B assumes that the driver can offer assistance in boarding and alighting. Unfortunately, driver assistance cannot always be assured. Even if operational procedures could be required, there is no way to ensure that they will be followed. If a heavy power wheelchair slipped off the platform, it would require a very strong and coordinated individual to restrain the wheelchair and occupant. In addition, the suggested procedure of disengaging the power drive on power wheelchairs is not possible on some models. Many new power wheelchairs have electric brakes controlled by the power drive which are automatically released when the power drive is disengaged.

Question 55: Active lift manufacturers participating on the Advisory Panel which developed the *Guideline Specifications* expressed concern that the safety barrier specified in Option A would significantly increase the weight and cost of the lift. The Board requests comments on any weight increase related to the requirements in paragraph (b)(5) and any incremental costs involved.

Paragraph (b)(6) concerns the lift platform surface and is derived from sections 2.2.1.1 and 2.2.1.2 of the *Guideline Specifications.* The provision is identical to that for large buses which is discussed under § 1192.23(b)(6). See

[12] Unless otherwise noted, the references to the *Guideline Specifications* in connection with paragraph (b)(1) through (12) mean the *Guideline Specifications for Active Wheelchair Lifts.*

Question 5 regarding whether a static coefficient of friction of 0.6 should be specified for slip resistant surfaces.

Question 56(a): The *Guideline Specifications* recommend a 48 inch lift platform length as preferable. As discussed under § 1192.23(b)(6), a shorter lift platform would not accommodate individuals who use larger power wheelchairs and three wheeled "scooters". The ADA requires that public entities provide paratransit to individuals with disabilities who cannot use fixed route service. See 42 U.S.C. 12143. If a shorter lift platform is specified for larger buses, a longer lift platform would have to be specified for vans and small buses used to provide paratransit. The Board seeks information on the maximum lift platform length which can be accommodated on various types of vans and small buses and any incremental costs associated with longer lift platforms.

Question 56(b): Vans and small buses are sometimes used to provide fixed route service, especially in rural and small urban areas. The Board requests comments on whether vans and small buses used to provide fixed route service should be required to have the same lift platform length as large buses used in fixed services.

Question 56(c): The *Guideline Specifications* also recommend a 32 inch lift platform width as preferable. The doorways of many vans and small buses are not as width-constrained as large buses and may be able to accommodate a wider lift. The Board seeks information on the types of vans and small buses which: (1) Can accommodate a 32 inch wide lift platform, and (2) cannot accommodate a 32 inch wide lift platform.

Paragraph (b)(7) deals with platform gaps and is derived from section 2.2.3.2 of the *Guideline Specifications* and the California specifications. Except as noted below, the provision is similar to that for large buses discussed under § 1192.23(b)(7). See *Question 7* regarding the side gap on lifts in which the doors open into the vestibule. A second provision has been added to allow for a hand hold on semi-automatic lifts. The hand hold may not exceed 1½ inches by 4½ inches so as not to catch the wheelchair or mobility aid wheels.

Paragraph (b)(8) concerns the platform entrance ramps and is derived from section 2.2.3 of the *Gudeline Specifications.* The provision is identical to that for large buses which is discussed under § 1192.23(b)(8). See *Question 8* regarding whether the slope and threshold specifications can be achieved.

Question 57: Paragraph (b)(9) specifies the maximum lift platform deflection and is derived from section 3.1.3 of *Guideline Specifications.* The provision is similar to that for large buses discussed under § 1192.23(b)(9), except that the *Guideline Specifications* specify a 400 pound test instead of the 600 pound load the lift is designed to raise. The provision is intended to limit only the deflection of the lift platform and not the tilting of the vehicle caused by the weight of a wheelchair or mobility aid. As discussed above, depending on the lift platform length specified for large buses, vans and small buses may need to accommodate heavier wheelchairs and mobility aids. Obviously there is some limit. The Board requests comments on whether the lift platform deflection requirement should be 600 pounds and any incremental costs involved.

Paragraph (b)(10) concerns lift platform movement and is derived from section 2.5.10.1 of the *Guideline Specifications.* The provision is similar to that for large buses which is discussed under § 1192.(b)(10).

Paragraph (b)(11) deals with boarding direction and is derived from section 2.1.4 of the *Guideline Specifications.* The provision is identical to that for large buses which is discussed under § 1192.93(b)(11).

Question 58: Paragraph (b)(12) concerns handrails and is derived from section 2.2.7 of the *Guideline Specifications* with a change in handrail height based on common accessibility standards for buildings and facilities. Except as noted below, the provision is similar to that for large buses discussed under § 1192.23(b)(13). See *Questions 11 (a) through (c)* regarding handrail specifications and force requirements. Paragraph (b)(12) requires a handrail on only one side of the lift. This is due to the design of active lifts which fold into the passenger compartment. The handrails need to fold or retract and having handrails on both sides may pose a design problem. The Board requests comments on whether it is feasible to provide handrails on both sides of an active lift.

Question 59: The guidelines for vans and small buses do not require lifts to accommodate standees as in the case of large buses. See § 1192.23(b)(12). Vans and small buses usually have lower floors and shorter and fewer steps than large buses which are easier to use by individuals with semi-ambulatory disabilities. The Board requests comments on whether lifts on vans and small buses should be required to accommodate standees. Should any requirements for lifts to accommodate standees apply to vehicles only above a certain floor height and, if so, what should the floor height be. Are there other constraints which may make lifts on some vans and small buses unsuitable for standees such as doorway height or the single handrail requirement?

Paragraphs (c) (1) through (8) set forth the requirements for ramps to be used as boarding devices. The provisions are the same as those for large buses which are discussed under § 1192.23(c) (1) through (8).

Paragraphs (d) (1) through (6) set forth requirements for securement systems. Paragraph (d)(1) concerns restraint forces and is derived from section 2.3.2 of the *Guideline Specifications for Wheelchair Securement Devices.*[13] Crash tests show that smaller vehicles experience higher peak deceleration (e.g., 21–25g for small buses versus 8–10g for large buses). The requirement specifies that both the securement device itself and the attachment to the vehicle must be capable of withstanding the specified force. These guidelines are intended to provide a base line for restraint requirements. The Board understands that the National Highway Traffic Safety Administration is considering proposing additional regulations in this area. Securement systems which utilize cargo straps of one type or another may have little difficulty meeting these requirements. More problematic are the various clamp devices used in some transit systems. The Board, in cooperation with the UMTA-funded Project ACTION, recently published a technical assistance brochure on Securement of Wheelchairs and Other Mobility Aids on Transit Vehicles which describes the successful systems used by some transit agencies. The brochure, available free from the Board, is part of the Board's ongoing program of technical assistance to help covered entities provide accessible services.

Paragraph (d)(2) concerns location and size of the securement area and is identical to the provision for large buses which is discussed under § 1192.23(d)(2).

Paragraph (d)(3) states that the securement system must accommodate common wheelchairs and mobility aids. (For the definition of this term, see the appendix to the preamble.) This includes power wheelchairs and three wheeled "scooters." See *Question 16* seeking

[13] Unless otherwise noted, the references to the *Guideline Specifications* in connection with paragraphs (d) (1) through (6) mean the *Guideline Specifications for Wheelchair Securement Devices.*

information on new securement systems under development.

Question 60: Paragraph (d)(4) concerns seating orientation of securement systems and is derived from section 2.1.3 of the *Guideline Specifications*. The *Guideline Specifications* do not specify an orientation but the Advisory Panel which developed the document agreed that forward facing seating was safer than side facing seating. This is supported by all crash test data to date in which even some power wheelchairs secured sideways tend to fold and disintegrate. The occupants of side facing wheelchairs are also subjected to impact with the chair armrests which could cause severe injury. On the other hand, the safest orientation is rear facing, but only if a padded barrier is provided behind the passenger's head and upper torso to prevent whiplash. For the discussion of the specifications for the padded barrier, see § 1192.23(d)(4). During the Advisory Panel meetings on the *Guideline Specifications*, demand responsive operators favored side facing seating because it provided greater capacity. However, the need for more than two spaces, which can be accommodated forward facing even in some of the smallest mini-vans, is not justified in most cases due to the common low "load factors" of 1.5 persons per vehicle hour. Furthermore, a side facing orientation in many, if not all, vans and small buses causes the wheelchair or mobility aid foot rests to intrude into the aisle needed for other passengers. The deceleration or "g" forces are generally higher for small vehicles, which is reflected in the greater restraint force requirements and the rear facing orientation may be more appropriate for vans and small buses. Some vans use securement straps which are attached to the floor in tracks and can be easily moved and rearranged to fit different chair configurations, making it possible for passengers to choose the orientation they prefer. The Board requests comments on whether a rear facing orientation should be permitted for vans and small buses. If a rear facing orientation is permitted, should a padded barrier be required and are the specifications discussed under § 1192.23(d)(4) appropriate for padded barriers? The Board also seeks information on the cost of providing such a padded barrier.

The guidelines do not require seat belts or shoulder harnesses. See *Question 17(b)* regarding whether seat belts or shoulder harnesses should be provided for wheelchair and mobility aid users.

Paragraph (d)(5) specifies that the securement system shall limit the movement of an occupied wheelchair or mobility aid to no more than 2 inches in any direction. The provision is identical to that proposed for large buses which is discussed under § 1192.(d)(5). See *Question 18* regarding whether the maximum 2 inch movement is appropriate.

Paragraph (d)(6) deals with stowage and is derived from section 2.1.4 of the *Guideline Specifications*. It simply provides that the securement system shall not cause a tripping hazard and that the securement area should be available for standees when needed.

Section 1192.135 Interior Circulation, Handrails and Stanchions

Except as noted below, this section is similar to that for large buses which is discussed under § 1192.29. See *Question 11(b)* regarding whether it is feasible to include handrail dimensions in this provision without restricting the minimum 32 inch clearance for open doorways.

Question 61: Paragraph (a) states that handrails and stanchions shall be placed to permit ample turning and maneuvering space for wheelchairs and other mobility aids to enter the bus and reach a securement location from a lift or ramp. The Board requests comments on whether further design specifications are needed with respect to maneuvering space and the placement of handrails and stanchions and, if so, what the specifications should be.

Paragraph (e) is derived from § 2.2.1.3 of the *Guideline Specifications for Active Wheelchair Lifts* which specifies only door opening height. This paragraph adds the requirement that the height clearance continue to the securement location. For many persons with disabilities, especially high-level spinal cord injury, ducking to enter a low door is difficult or impossible. Similarly, riding with insufficient headroom is uncomfortable and possibly dangerous. The height is derived from anthropometric data for a 95th percentile male seated in a wheelchair and is consistent with information contained in the appendix to UFAS § A4.2.4.

Section 1192.137 Floors, Steps and Thresholds

This section is similar to that for large buses which is discussed under § 1192.25. See the following questions:

- *Question 5* regarding whether a static coefficient of friction of 0.6 should be specified for slip resistant floor surfaces.
- *Question 19* regarding whether the contrast specified for step edges is suitable.

Question 62: As discussed under § 1192.25(c), common accessibility standards for buildings and facilities specify a maximum 7 inch step riser height and 11 inch tread depth. See ANSI A117.1—1986, § 4.9.2. The Board requests comments on whether the following specifications are achievable on vans and small buses, and any potential cost involved:

(a) The height from the ground to the first step shall not exceed 14 inches.

(b) Stair risers shall not exceed 7, 8, or 9 inches.

(c) Stair treads shall be no less than 10 or 11 inches wide.

Section 1192.139 Lighting

This section is similar to that for large buses which is discussed under § 1192.31. See the following questions:

- *Question 23(a)* regarding whether the specified lighting level can be achieved 3 feet beyond the outer edge of the lift, ramp or bridge plate.
- *Question 23(b)* regarding whether the specified lighting levels are sufficient for persons with vision impairments.

Subpart H—Over-the-Road Buses and Systems

Section 1192.151 General

Over-the-road buses operated by private entities are not required to be wheelchair accessible until July 26, 1997 for small providers, and July 26, 1996 for other providers. See 42 U.S.C. 12186(a)(2). The definition of "small provider" will be addressed in the DOT ADA regulations. The Office of Technology Assessment (OTA) is required to conduct a study of the access needs of individuals with disabilities to over-the-road buses and the most cost-effective methods for providing access to such buses. See 42 U.S.C. 12185. A draft of the OTA report is to be provided to the Board for comment and the Board's comments are to be included in the final report which is due to Congress by July 26, 1993. Id. In the interim, DOT is required to issue standards for over-the-road buses which do not involve structural changes or the use of boarding devices. See 42 U.S.C. 12186(a)(2)(A). The guidelines in this subpart cover only those matters which do not involve structural changes and are similar to the provisions for large buses with exception of mobility aid accessiblity. The provisions for mobility aid accessibility are reserved pending the completion of the OTA study.

If a public entity contracts with a over-the-road bus operator to provide designated public transportation covered by title II of the ADA, the requirements of title II, including the provision of wheelchair accessibility, apply. See 42 U.S.C. §§ 12141 (definition of "operators") and 12142. See also 49 CFR 37.3(b).

Section 1192.153 Doors, Steps and Thresholds

This section is similar to that for large buses which is discussed under § 1192.25. See the following questions:

- *Question 5* regarding whether a static coefficient of friction of 0.6 should be specified for slip resistant floor surfaces.
- *Question 19* regarding whether the contrast specified for step edges is suitable.
- *Question 21(b)* regarding door closing force and speed.

Question 63: As discussed under § 1192.25(c), common accessibility standards for buildings and facilities specify a maximum 7 inch step riser height and 11 inch tread depth. See ANSI A117.1–1986, § 4.9.2. The Board requests comments on whether the following specifications can be achieved within the confines of the stepwell on over-the-road buses.

(a) The height from the ground to the first step shall not exceed 14 inches.

(b) Stair risers shall not exceed 7, 8, or 9 inches.

(c) Stair treads shall be no less than 10 or 11 inches wide.

Paragraph (d) specifies that the clear width of the door shall be 32 inches when open to accommodate individuals with semi-ambulatory disabilities. (The 32 inch door opening accommodates the crutch-tip to crutch-tip stance of a 95% percentile male crutch user.)

Section 1192.155 Interior circulation, Handrails and Stanchions

Over-the-road buses rarely have handrails and stanchions to the same extent as urban transit buses and this provision does not require handrails or stanchions to be installed except in the entrance to assist persons with disabilities to board and alight safely. See the following questions:

- *Question 11(b)* regarding whether it is feasible to include handrail dimensions in this section without restricting the 32 inch clear width required for open doorways.
- *Question 22(b)* regarding whether a 1½ inch clearance between handrails and stanchions used for boarding assistance in the entrance and the driver's barrier is sufficient to prevent inadvertent wedging of a passenger's arm.

Section 1192.157 Lighting

Question 64: This section is similar to that for large buses which is discussed under § 1192.31. See *Question 23(b)* regarding whether the specified lighting levels are sufficient for persons with vision impairments. The Board requests comment on the applicability of these provisions to over-the-road buses.

Section 1192.159 Mobility Aid Accessibility. [Reserved]

This section is reserved pending the completion of the OTA study.

Subpart 1—Other Vehicles and Systems

Section 1192.17 General

Question 65: Paragraph (a) states that vehicles and conveyances which are not covered by the other subparts and which are required to be accessible by the DOT ADA regulations must comply with the applicable provisions of this subpart. Some of the vehicles and conveyances addressed by this subpart may be more commonly associated with recreation than with designated or specified public transportation. See *Question 52* regarding whether trams, motorized carts and powered vehicles pulling one or more trailer units used for shuttle service at such places as malls, airports, or amusement parks should be covered by subpart G or subpart 1. The Board requests comment on what other types of vehicles or conveyances are not clearly covered by another subpart and should be included under subpart 1.

Paragraph (b) provides that if an element or feature of a vehicle or conveyance is replaced or modified, it must comply with the accessibility requirements for that feature, to the extent feasible.

Section 1192.173 Automated Guideway Transit Vehicles and Systems

This section contains requirements for automated guideway transit (AGT) systems which normally operate with small vehicles boarded from platforms level with the vehicle floor. These systems operate similar to rapid rail and this section specifies compliance with most of the parts of subpart C. However, since AGT systems use small, lightweight vehicles moving at relatively slow speed, the vehicles are generally able to attain much smaller horizontal and vertical gaps from the platform than rapid rail. Therefore, paragraph (b) contains stricter requirements for coordination with the boarding platform.

Paragraph (c) requires that barriers be provided to prevent persons from stepping off platforms between cars. Since AGT systems usually operate behind platform screens which have doors that open only when a vehicle door is correctly aligned, most systems will not need to provide barriers on the vehicles.

Section 1192.175 High-Speed Rail Cars and Systems

High speed rail systems have not yet been constructed in this country but several systems are in various stages of planning. The systems planned will generally be designed to operate only on dedicated track or special guideway and are, therefore, more like rapid rail than commuter rail or intercity rail. Except in very few cases, tracks used by freight trains are not suitable for high speed rail. Since the systems envisioned will not be affected by station platform set-back requirements needed for freight trains, this section requires high speed rail cars to provide level boarding from high-platforms.

High speed rail cars will probably be closer in design to intercity rail cars than to rapid rail vehicles so paragraph (b) requires compliance with subpart F.

Section 1192.177 Ferries, Excursion Boats and Other Vessels

This section covers conveyances which operate on water and provide designated or specified public transportation or are used for recreation. The Board will coordinate these guidelines with the United States Coast Guard.

Paragraph (a) specifies a minimum clear door width and permits a maximum ¾ inch threshold to accommodate gaskets and water seals provided they are beveled on both sides.

Paragraph (b) requires that at least one seating area be provided adjacent to other passenger seats which can accommodate a wheelchair or mobility aid user. The provision is the same as that for vehicles.

Question 66: Paragraph (c) is reserved for securement systems. It seems reasonable, under some conditions, for a wheelchair or mobility aid to be secured, especially in rough weather. On the other hand, there may be some operations, such as slow moving canal boats, where it would not be necessary. One means of dealing with this issue would be to include specifications for securement systems "where provided." The Board seeks comment on whether securement systems should be provided on vessels and any costs involved.

Question 67(a): Paragraph (d) specifies that gangplanks and other boarding devices shall comply with the provisions for ramps and bridge plates

contained in § 1192.125(c). A critical issue in developing guidelines for vessels is the effect tidal changes will have on gangplanks and boarding ramps. The slope of a gangplank or boarding ramp may vary with tidal changes. Furthermore, movement of the vessel with respect to the boarding platform is not controllable as it is with other modes. For this reason, the accessibility of the vessel is closely related to the accessibility of the loading platform or dock. Even where floating docks are used, the slope of any ramp connection to land may change with the tide. At least one ferry system has built a facility on land housing an elevator with a multi-level pier extending out over the water. The ferry docks at the appropriate pier level and the person with a disability uses the elevator to reach the corresponding pier. This arrangement solves some of the problem of salt-water corrosion of the elevator that would occur if it were over the water. Even with such an arrangement, however, there may still be extreme variations in gangplank slope. Especially with choppy water, the variations between boat floor level and dock may undergo extreme variations. The Board requests comments on whether the slope of the gangplank should be specified only under "normal" conditions, and, if so, what constitutes "normal." While it is tempting to permit steeper slopes than would otherwise be permitted, the presence of water on the gangplank may make the steep slope more unusable than in dry situations. How should these potential problems be addressed and what are the costs involved?

Question 67(b): Sometimes a gangplank may otherwise be accessible except that it rests on the vessel's gunwale with a step down to the deck. This barrier could be eliminated by the use of a raised platform on the deck, with a ramp leading off, possibly at right angles to the gangplank. Such a platform and ramp could be portable as long as it were put in place at each docking so that would be available to be used with some degree of independence. The Board requests comments on this or other solutions to barriers presented by gunwales and any costs involved.

Paragraph (d) specifies the general design of an accessible restroom based on the provisions for commuter rail and intercity rail. An accessible restroom is only required if a restroom is provided for other passengers.

Question 68: Paragraph (f) is reserved for elevators in multi-deck vessels. Common accessibility standards for buildings and facilities permit smaller elevators in the case of alterations to existing buildings where structural constraints prohibit use of a full-size elevator. See UFAS § 4.1.6(4)(c)(ii) which permits an elevator as small as 48 inches by 48 inches. The Board requests comments on whether a smaller elevator should be permitted in multi-deck vessels and any costs involved. Should elevators be required? Should a cruise ship be considered as a hotel and meet the requirements for accessible lodging? Should accessibility requirements be based on size of the vessel and, if so, what should be the dividing line?

Regulatory Process Matters

These guidelines are issued to provide guidance to DOT in establishing accessibility standards for transportation vehicles required to be accessible by the ADA. The standards established by DOT must be consistent with and may incorporate these guidelines. These guidelines, when considered together with regulations issued by DOT, meet the criteria for a major rule under Executive Order 12291. The Board has prepared a Preliminary Regulatory Impact Analysis (PRIA) which has been placed in the docket and is available for public inspection at the Board's office. The PRIA includes a comparison of the Board's guidelines with existing voluntary guidelines and industry practice; a qualitative and quantitative discussion of the benefits of accessibility; a cost impact analysis for certain accessibility elements; and a discussion of the regulatory alternatives considered.

These guidelines when issued in final form, will not directly effect any transportation vehicle. The DOT ADA regulations will include accessibility standards, based on these guidelines, and will determine the applicability of those standards to specific vehicles. Therefore, the actual number of vehicles affected, and the overall cost of all transportation systems, is a function of the DOT ADA regulations. For this reason, the PRIA prepared by the Board for these guidelines has been confined to an assessment of the incremental costs for each vehicle type which would be incurred in the absence of the guidelines (the "base case").

The DOT ADA regulations issued on October 4, 1990 require vehicles purchased after August 26, 1990 to be accessible in accordance with the requirements of the ADA. The "base case" is assumed to be the existing voluntary guidelines and industry practice which would be incorporated in vehicle design to meet the requirements of the DOT ADA regulations in the absence of the Board's guidelines. For public entities covered by title II of the ADA, this assumption is reasonable since many public transit agencies had begun to purchase accessible vehicles prior to the ADA. For example, all buses purchased in California have been required by state statute to be accessible and meet the California specifications since 1978. Other transit agencies have made commitments to accessibility as early as 1974. For those transit agencies which have only recently begun to purchase accessible vehicles, there are ample information resources available, including the voluntary guidelines sponsored by the Urban Mass Transportation Administration (UMTA), to ensure that the "base case" will be relatively uniform from agency to agency.

For private entities, the situation is more complicated. Many private entities covered by title III of the ADA do not have a history of providing accessibility. As a result, the shared information base among similar entities will be much smaller. Nevertheless, it can be assumed that the "base case" for private entities will be similar to that for public entities for two reasons. First, many of the vehicles are provided by the same manufacturers which supply public entities. A private entity requesting an "accessible vehicle" is likely to get one similar to that which would be supplied to a public transit agency. Second, a private entity seeking to avoid litigation is likely to specify a vehicle which it has reason to believe is generally considered to be accessible, and would likely look to public transit agencies as a model.

To the extent feasible, in accordance with the specific requirements of the ADA and its legislative history, the proposed guidelines closely follow existing voluntary guidelines and industry practice. The PRIA focuses on analyzing the incremental cost impact of each specific provision of the guidelines insofar as it differs from the "base case".

Generally, there are two broad approaches which can be taken in developing guidelines: (1) Design specifications and (2) performance specifications.The advantage of a design specification is that it sets forth specific quantifiable valuse which must be met (such as platform size or handrail height) and which can be readily determined at the outset. Checking for compliance is relatively easy and consists of taking simple measurements. The major disadvantage is that it limits innovation and may not result in the best or most cost-effective solution. Also, such designs are slow to respond

to technological changes, in this case, changes in wheelchair and mobility aid design.

On the other hand, a performance specification defines a function which the design must meet and allows a variety of solutions. A performance specification for vehicles would permit on-going design changes to meet changing wheelchair and mobility aid designs. The primary disadvantage is that a performance specification must frequently include one or more tests which must be performed to check for compliance. Verification of compliance, therefore, is not as easy on the part of the purchaser. Moreover, compliance cannot always be determined until after the fact, that is after a failure to meet the performance specifications which could lead to claims of discrimination and litigation. For example, a performance specification which required a lift to accommodate "common wheelchairs and mobility aids" could lead to disputes over which specific type of wheelchairs or mobility aids are included. It would also require manufacturers and transit providers to respond to a "moving target" of changing wheelchair and mobility aid design.

The proposed guidelines have taken the "hybrid" approach of providing design specifications in some cases (such as lift platform length) and performance specifications in others (such as information systems for persons with hearing impairments). In some cases, both types of specifications are considered and specific comments requested from the public on which approach is best.

As a result, the estimate of the direct costs for the proposed guidelines is much less straightforward than for buildings and facilities where a specific design solution exists. Where the proposed guidelines have attempted to codify existing voluntary guidelines or industry practice, or where the requirements can easily be satisfied within a competitive bidding process involving major suppliers, then insignificant or no direct costs are assigned to the implementation of the guidelines. However, direct capital and operating costs are incurred when the guidelines attempt to significantly extend existing voluntary guidelines or industry practice. Moreover, since there are a variety of possible solutions to meet a performance specification, each with its own associated development and product costs, a specific cost estimate is not possible. In such cases, the approach taken in estimating costs is to perform an engineering analysis of the contribution a particular component or part thereof makes to the whole, and how a change in that component would affect the cost of the whole. For instance, in the case of a typical lift for a large bus, according to a survey of lift manufacturers such lifts cost between $12,000 and $15,000, which is 7% to 10% of the bus cost. Depending on the chosen design solution, the proposed requirements for a bus lift have the potential to cause a 1–5% increase in the unit bus capital cost as a result of the following changes:

- The requirement for controls interlocked with the drive or propulsion system. Based on estimates from manufacturers offering this feature for current systems, such controls typically cost less than 1% of the bus unit cost.
- The static load, deflection and height requirements for the outer safety barrier. These may require design modification to increase the strength of the loading edge with new or additional material. Since the loading edge constitutes less than 10% of the lift by weight, and the material cost is proportional to weight, the potential additional costs would be less than 10% of the lift cost and less than 1% of the bus unit cost.
- The increased platform surface area which may require design modification and additional platform material. The difference in platform area between the base case and the requirement represents an increase of approximately 9%. Since the platform is less than 25% of the total lift weight, the increase in platform area is proportional to increase in platform weight, and material cost is proportional to weight, the potential additional costs would be less than 2.5% of the lift cost and less than 1% of the bus unit cost.
- The requirements that the platform accommodate standees which may require modification of handrails and the platform surface. The additional handrails and platform markings would impose a less than 1% incremental cost to the bus unit cost.

It is expected that the increased static load, deflection and larger platform requirements may incur a weight related cost of less than 1% of the vehicle. Some changes such as meeting the contrast ratio on step edges is expected to have a negligible effect. Existing UMTA regulations require the step edge to "contrast" but without any quantitative value. It is anticipated that some markings may meet the requirement now while others would need to make marginal changes in the brightness of the lighter color, since most floor material is often black. The incremental unit vehicle cost is expected to be somewhat higher for vans and small vehicles since the incremental cost to a lift, for example, will be approximately the same as for a large bus but the unit cost of the vehicle is lower and, thus, the percentage change will be higher.

In addition to direct costs, six categories of indirect costs were analyzed:

(1) Research and development costs (costs incurred by the vehicle and equipment manufacturers in meeting the new requirements);

(2) Organizational costs (costs arising from potential organizational and staff difficulties in adopting new vehicles and equipment types);

(3) Technical risk (costs associated with the unknown capacity of the operator to support the new equipment);

(4) Financial risk (costs of capital outlays and associated financial burden assumed for new equipment);

(5) Cost of non-compliance (enforcement costs including administrative, legal and court costs); and

(6) Cost of inhibiting innovation (implementation of any purely design-based specification could be associated with a cost in terms of inhibition of technical and other innovation).

The PRIA applies the foregoing analysis to the specific requirements for the various types of vehicles. The cumulative effect on a particular vehicle type results in the following estimates of cost:

Vehicle type	Incremental unit capital cost	Incremental unit operating and maintenance cost	Seat decrease [1]	Weight increment
Large buses	<4.5%	<0.5%	<3%	<2.5%
	¢6,975	$128		
Rapid rail	<2.5%	<1.5%	<3%	None
	$37,500	$837		
Light rail:				
Level entry	<0.5%	None	<3%	None

Vehicle type	Incremental unit capital cost	Incremental unit operating and maintenance cost	Seat decrease [1]	Weight increment
Non-level entry	$12,500 <1.5% $37,500	<1% $516	<6%	<1%
Commuter rail:				
Level entry	<1.5% $22,500	<1% $785	<4%	None
Non-level entry	<1.5% $22,500	<1% $785	<4%	None
Intercity rail:				
Level entry	<0.5% $5,500	None	<8%	None
Non-level entry	<3% $33,000	<2% $1,648	<8%	None
Vans and small buses	<6% $2,700	None	<14%	<1.5%
Over-the-road buses	<1% $2,000	None	None	None
AGT systems	<1% $15,000	None	<5%	None
Boats	None	None	<2%	None

[1] Fewer seats and heavier vehicles may lead to indirect opearting costs.

The above chart summarizes the total estimated incremental costs derived from a series of charts in the PRIA which address the specific requirements for each vehicle or system type. Columns two and three present the estimated percentage changes in capital and operating and maintenance costs, along with the dollar value computed from the vehicle unit cost. For example, the estimated increase in capital cost for large buses is less than 4.5% of the bus unit cost of $155,000, or approximately $6,975. The estimated operating and maintenance cost increase is less than 0.5% of an estimated annual per-vehicle operating cost of $19,500 and maintenance cost of $6,100. The vehicle unit capital, operating, and maintenance costs are derived from information supplied by vehicle manufacturers, operators, trade associations, and government reports.

Columns four and five present the estimates of potential decreases in seats and weight increment per vehicle, respectively. These represent indirect costs. For example, the increase in weight may represent an increase in operating cost for buses and vans depending on fuel cost. A small increase in weight of rail vehicles, on the other hand, may have a negligible effect on operating cost. Also, the estimated potential for a decrease in seating for intercity rail and some commuter rail cars, for example, assumes that the provision of a wider vestibule would result in seat loss. However, if the spacing between rows of seats in a typical coach car is decreased by a fraction of an inch, the vestibule can be widened with no loss of seats.

Estimating the cost impact of seat decrease for other modes is far more difficult because relevant data are lacking. For example, for large buses the potential is for the loss of one seat, out of 35 or 40, for a potential decrease of 3%. Vehicles operating in fixed-route service have very different constraints during peak and non-peak periods. During non-peak periods, for instance, typical large buses operate with empty seats so the loss of one seat will have a negligible effect. During peak periods, on the other hand, when buses often have standees, the absence of a seat actually translates to an increase in capacity for standees. See *Question 3(d).* The missing seat represents 2 to 4 additional passengers who are able to board instead of waiting for another bus. While some passengers may place a premium on a seat, others will place a premium on being able to board a "full" bus and arriving at their destination a few minutes earlier than otherwise. In any event, the increase in capacity provides more rides and generates more revenue. Most likely, there is some point at which the seat decrease adversely affects ridership and, thus, operating revenues. The fact that the Washington Metropolitan Area Transportation Authority in a recent order for rapid rail cars specified fewer seats to increase ridership suggests that 1 or 2 seats is not significant for large vehicles.

For small buses and vans, the seat loss is proportionately higher because there are fewer total seats. However, many demand responsive systems typically operate with load factors of 1.5 passengers per vehicle hour so that the loss of one seat may have little or no effect. This may not be true for small buses and vans operating in fixed-route service or rural areas where seats have a higher value.

Question 69: The Board seeks any data which would quantify the cost impact of fewer seats on various modes, especially any surveys of passengers which have attempted to determine the relative importance of seats versus rides. The American Public Transit Association has provided the Board with survey data on base fares for different modes. However, the actual cost of a ride, and the overall effect of decreased seating, is dependent on the time of day, zone charges, discount fares, and a variety of other factors. The Board seeks any data which would help develop a profile of a "typical" fare or cost ranges for rides.

Question 70: Considerable data exists on publicly operated transportation vehicles as a result of the reporting requirements of section 15 of the Urban Mass Transportation Assistance Act. The Board seeks data for privately operated transportation vehicles which would assist the Board in developing a final Regulatory Impact Analysis.

With respect to benefits, the PRIA concludes that all persons with disabilities able to use public transportation would experience a decrease in the difficulty and cost of traveling as a result of the guidelines. In addition, an estimated 175,000 users of power wheelchairs and 120,000 users of three-wheeled "scooters," currently excluded from many transit systems because of small lifts and inappropriate securement systems, would be able to use transportation systems nationwide. Moreover, several requirements of the guidelines, such as better signage, better illumination, public address systems, wide doorways, stop request systems, and more readable route and

destination signs would benefit the general public.

With respect to regulatory alternatives the ADA specifically requires that the guidelines "shall establish additional requirements, consistent with this Act, to ensure that * * * rail passenger cars, and vehicles are accessible, in terms of architecture and design, transportation and communication, to individuals with disabilities." See 42 U.S.C. 12204(b). The ADA further provides that nothing in the Act shall be construed to apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 or the regulations issued by Federal agencies pursuant to such title. See 42 U.S.C. 12201(a). To this end, the proposed guidelines have relied on existing regulatory requirements, such as 49 CFR parts 27 and 609, issued under title V of the Rehabilitation Act of 1973.

These guidelines considered together with the DOT ADA regulations may have a significant impact on a substantial number of small entities. This impact is required by the statute, however, and the Board does not have the discretion under the ADA to lessen the requirements.

A Federalism assessment will be prepared by DOT. The Board will cooperate with DOT in the preparation of the assessment.

Finally, the guidelines do not have any significant impact on the environment.

Appendix to the Preamble—Definitions

Accessible means, with respect to vehicles covered by this part, compliance with the provisions of this part.

Automated guideway transit (AGT) system means a fixed-guideway transportation system which operates with small automated (driverless) individual vehicles or multi-car trains. Service may be on a fixed schedule or in response to a passenger-activated call button. Such systems are sometimes called "people movers".

Bus means any of several types of self-propelled vehicles, other than an over-the-road bus, generally rubber tired, intended for use on city streets, highways, and busways, including but not limited to minibuses, forty- and thirty-foot transit buses, articulated buses, double-deck buses, and electric powered trolley buses, used to provide designated or specified public transportation services. Self-propelled, rubber tire vehicles designed to look like antique or vintage trolleys or street cars are considered buses.

Common wheelchairs and mobility aids means belonging to a class of three or four wheeled devices, usable indoors, designed for and used by persons with mobility impairments which do not exceed 30 inches in width and 48 inches in length, and do not weigh more than 600 pounds when occupied.

Commuter rail transportation means short-haul rail passenger service operating in metropolitan and suburban areas, whether within or across the geographical boundaries of a state, usually characterized by reduced fare, multiple ride, and commutation tickets and by morning and evening peak period operations. This term does not include light or rapid rail transportation.

Commuter rail car means a rail passenger car obtained by a commuter authority for use in commuter rail transportation.

Demand responsive system means any system of transporting individuals, including but not limited to providing designated public transportation service or specified public transportation service by vehicle at the request of the user, which is not a fixed route system.

Designated public transportation means transportation provided by a public entity (other than public school transportation) by bus, rail, or other conveyance (other than transportation by aircraft or intercity or commuter rail transportation) that provides the general public with general or special service, including charter service, on a regular and continuing basis.

Fixed route system means a system of transporting individuals (other than by aircraft), including but not limited to providing designated or specified public transportation services, on which a vehicle (including a bus, van, rail vehicle, or other vehicle) is operated along a prescribed route according to a fixed schedule and which does not involve an advance request by a passenger to ensure that service is provided.

High speed rail means an intercity rail service which operates on a dedicated guideway or track not used by freight, including, but not limited to, trains on welded rail, magnetically levitated (maglev) vehicles on a special guideway, or other advanced technology vehicles, designed to travel at speeds in excess of those possible on existing railroads.

Historical or antiquated rail passenger car means a rail passenger car

(a) Which is not less than 30 years old at the time of its use for transporting individuals;

(b) The manufacturer of which is no longer in the business of manufacturing rail passenger cars; and

(c) Which—

(1) Has a consequential association with events or persons significant to the past; or

(2) Embodies, or is being restored to embody, the distinctive characteristics of a type of rail passenger car used in the past, or to represent a time period which has passed.

Intercity rail transportation means transportation provided by the National Rail Passenger Corporation (Amtrak).

Intercity rail passenger car means a rail passenger car obtained by Amtrak for use in intercity rail transportation.

Light rail means a streetcar-type vehicle railway operated on city streets, semi-private rights-of way, or exclusive private rights-of-way. Service may be provided by step-entry vehicles or by level-boarding.

New vehicle means a vehicle which is offered for sale or lease after manufacture without any prior use.

Operates includes, with respect to a fixed route or demand responsive system, the provision of transportation service by the public entity itself or by a person under a contractual or other arrangement or relationship with a public entity.

Over-the-road bus means a vehicle characterized by an elevated passenger deck located over a baggage compartment.

Person with a disability means an individual having a permanent or temporary physical or mental impairment that substantially limits one or more of the major life functions of such individual.

Rapid rail means a subway-type transit vehicle railway operated on exclusive private rights-of-way with high-level platform stations. Rapid rail may also operate on elevated or at-grade track separated from other traffic.

Remanufactured vehicle means a vehicle which has been structurally restored and has had new or rebuilt major components installed to extend its service life.

Specified public transportation means transportation by bus, rail, or any other conveyance (other than aircraft) provided by a private entity to the general public, with general or special service (including charter service) on a regular and continuing basis.

Used vehicle means a vehicle with prior use that was originally purchased before June 26, 1990.

List of Subjects in 36 CFR Part 1192

Civil rights, Handicapped, Individuals with disabilities, Transportation.

Authorized by vote of the Board on December 13, 1990, and January 2, 1991.

William H. McCabe,

Chairman, Architectural and Transportation Barriers Compliance Board.

For the reasons set forth in the preamble, it is proposed to add part 1192 to title 36 of the Code of Federal Regulations to read as follows:

PART 1192—AMERICANS WITH DISABILITIES ACT (ADA) ACCESSIBILITY GUIDELINES FOR TRANSPORTATION VEHICLES

Subpart A—General

Sec.

Subpart B—Large Buses and Systems

Subpart C—Rapid Rail Vehicles and Systems

Subpart D—Light Rail Vehicles and Systems

Subpart E—Commuter Rail Cars and Systems

Subpart F—Intercity Rail Cars and Systems

SUBPART G—Vans and Small Buses

Subpart H—Over-the-Road Buses and Systems

Subpart I—Other Vehicles and Systems

Figures in Part 1192

Authority: Americans With Disabilities Act of 1990, Public Law 101–336, 42 U.S.C. 12204.

Subpart A—General

§ 1192.1 Purpose.

This part provides minimum guidelines and requirements for accessibility standards to be issued by the Department of Transportation in 49 CFR part 37 for transportation vehicles required to be accessible by the Americans with Disabilities Act (ADA) of 1990.

§ 1192.3 Definitions. [Reserved]

Subpart B—Large Buses and Systems

§ 1192.21 General.

(a) New, used or remanufactured buses having a Gross Vehicle Weight Rating (GVWR) of 19,500 pounds or above (except over-the-road buses covered by subpart H of this part), to be considered accessible by regulations issued by the Department of Transportation in 49 CFR part 37, shall comply with the applicable provisions of this subpart.

(b) If portions of the vehicle are modified in such a way that it affects or could affect accessibility, each such portion shall comply, to the extent practicable, with the applicable provisions of this subpart. This provision does not require that inaccessible buses be retrofitted with lifts, ramps or other boarding devices.

§ 1192.23 Mobility aid accessibility.

(a) *General.* All vehicles covered by this subpart shall provide a level-change mechanism or boarding device (e.g., lift or ramp) complying with paragraph (b) or (c) of this section; sufficient clearances to permit a wheelchair or other mobility aid user to reach a securement location; and at least one securement device complying with paragraph (d) of this section.

(b) *Vehicle lift*—(1) *Design load.* The design load of the lift shall be at least 600 pounds. Working parts, such as cables, pulleys, and shafts, which can be expected to wear, and upon which the lift depends for support of the load, shall have a safety factor of at least six, based on the ultimate strength of the material. Nonworking parts, such as platform, frame, and attachment hardware which would not be expected to wear, shall have a safety factor of at least three, based on the ultimate strength of the material.

(2) *Controls.* The controls shall be interlocked with the vehicle brakes or transmission, or shall provide other apropriate fail-safe mechanisms or systems, so that the vehicle cannot be moved when the lift is not stowed and so the lift cannot be deployed unless the interlocks are engaged. Each control for deploying, lowering, raising, an stowing the lift and lowering the roll-off barrier shall be of a momentary contact type requiring continuous manual pressure by the operator and shall not allow improper lift sequencing when the lift platform is occupied. The controls shall allow reversal of the lift operation sequence, such as raising or lowering a platform that is part way down, without allowing an occupied platform to fold or retract into the stowed position.

(3) *Emergency operation.* The lift shall incorporate an emergency method of deploying, lowering to ground level with a lift occupant, and raising and stowing the empty lift if the power to the lift fails. No emergency method, manual or otherwise, shall be capable of being operated in a manner that could be hazardous to the lift occupant or to the operator.

(4) *Power or equipment failure.* Platforms stowed in a vertical position, and deployed platforms when occupied, shall have provisions to prevent their deploying, falling, or folding any faster than 12 inches/second or their dropping of a occupant in the event of a failure of power, chain, cable or hydraulic hose.

(5) *Platform barriers.* The platform shall be equipped with barriers to prevent any of the wheels of a wheelchair or mobility aid from rolling off the platform during its operation. A

movable barrier or inherent design feature shall prevent a wheelchair or mobility aid from rolling off the edge closest to the vehicle until the platform is in its fully raised position. Each side of the lift platform which extends beyond the vehicle shall have a barrier a minimum 1–½ inches high. Such barriers shall not interfere with entering the vehicle. The loading-edge barrier (roll-off barrier) which functions as a loading ramp when the lift is at ground level, shall be sufficiently high when raised or closed to prevent a power wheelchair or mobility aid from riding over it and shall withstand a static load of 1,600 pounds, applied at a height of 3 inches above and parallel to the platform, for 5 seconds without deflecting more than 5 degrees from the unstressed position. The barrier on the outboard or loading edge of the lift shall automatically raise or close, and remain raised or closed, at all times that the platform is more than 3 inches above the roadway or sidewalk and the platform is occupied. Alternatively, a barrier may be raised, lowered, opened or closed by the lift operator provided an interlock or inherent design feature prevents the lift from raising unless the barrier is raised or closed.

(6) *Platform surface*—(i) *Requirements.* The platform surface shall be free of any protrusions over ¼ inch high and shall be slip resistant. The platform shall have a minimum clear width of 30 inches measured from the platform surface to 30 inches above the platform and a minimum clear length of 48 inches measured from 2 inches above the surface of the platform to 30 inches above the surface of the platform. (See Fig. 1.)

(ii) *Exception.* Where a bus body structural member would preclude a lift platform with a minimum 30 inch clear width, the minimum clear width shall be as close to 30 inches as possible but in no case less than 28½ inches.

(7) *Platform gaps.* Any openings between the platform surface and the raised barriers shall not exceed ⅝ inch wide. When the platform is at vehicle floor height with the inner barrier down or retracted, gaps between the forward lift platform edge and the vehicle floor shall not exceed ½ inch horizontally and ⅝ inch vertically.

(8) *Platform entrance ramp.* The entrance ramp, or loading-edge barrier used as a ramp, shall not exceed a slope of 1:8, for a maximum rise of 3 inches, and the transition from roadway or sidewalk to ramp may be vertical without edge treatment up to ¼ inch. Thresholds between ¼ inch and ½ inch shall be beveled with a slope no greater than 1:2.

(9) *Platform deflection.* The lift platform (not including the entrance ramp) shall not deflect more than 3 degrees in any direction between its unloaded position and its position when loaded with 600 pounds applied through a 26 inch by 26 inch test pallet at the centroid of the platform.

(10) *Platform movement.* No part of the platform shall move at a rate exceeding 6 inches/second during deployment, lowering, lifting, or stowing. This requirement does not apply to the deployment or stowage cycles of lifts that are manually deployed or stowed. The maximum platform horizontal and vertical acceleration shall be 0.2g.

(11) *Boarding direction.* The lift shall permit both inboard and outboard facing of wheelchairs and mobility aids.

(12) *Use by standees.* Lifts shall accommodate persons using walkers, crutches, canes or braces or who otherwise cannot use steps. The platform may be marked to indicate a preferred standing position.

(13) *Handrails.* Platforms on lifts shall be equipped with handrails which move in tandem with the lift on both sides which shall be graspable throughout the entire lift operation. Handrails shall have a horizontal or diagonal component at least 12 inches long with the top between 30 inches and 34 inches above the platform. The handrails shall be capable of withstanding a force of 100 pounds concentrated at any point on the handrail without permanent deformation of the rail or its supporting structure. The handrail shall have a cross-sectional diameter between 1¼ inches and 1½ inches or shall provide an equivalent grasping surface, and have corner radii of not less than ⅛ inch. Handrails shall not interfere with wheelchair or mobility aid maneuverability when entering or leaving the vehicle.

(c) *Vehicle ramp*—(1) *Design load.* Ramps shall support a load of 600 pounds, placed at the centroid of the ramp distributed over an area of 26 inches by 26 inches, with a safety factor of at least 3 based on the ultimate strength of the material.

(2) *Ramp surface.* The ramp surface shall be continuous and slip resistant; shall not have protrusions from the surface greater than ¼ inch; shall have a clear width of 30 inches; and shall accommodate both four-wheel and three-wheel mobility aids.

(3) *Ramp threshold.* The transition from roadway or sidewalk and the transition from vehicle floor to the ramp may be vertical without edge treatment up to ¼ inch. Changes in level between ¼ inch and ½ inch shall be beveled with a slope no greater than 1:2.

(4) *Ramp barriers.* Each side of the ramp shall have barriers at least 2 inches high to prevent mobility aid wheels from slipping off.

(5) *Slope.* Where a 1:12 slope is not feasible, ramps shall have a slope no steeper than 1:8 for a maximum 3 inch rise, or no steeper than 1:10 for a maximum 6 inch rise. The slope shall be measured when the ramp is deployed to typical stops in the operating environment. Folding or telescoping ramps are permitted provided they meet all structural requirements of this section.

(6) *Attachment.* When in use for boarding or alighting, the ramp shall be firmly attached to the vehicle so that it is not subject to displacement when loading or unloading a heavy power mobility aid and that any gaps between vehicle and ramp shall not exceed ⅝ inch.

(7) *Stowage.* Ramps, including portable ramps stowed in the passenger area, shall be stowed in such a way that they do not pose any hazard to passengers.

(8) *Handrails.* If provided, handrails shall allow persons with disabilities to grasp them from outside the vehicle while starting to board, and to continue to use them throughout the boarding process, and shall have the top between 30 inches and 34 inches above the ramp surface. The handrails shall be capable of withstanding a force of 100 pounds concentrated at any point on the handrail without permanent deformation of the rail or its supporting structure. The handrail shall have a cross-sectional diameter between 1¼ inches and 1½ inches or shall provide an equivalent grasping surface, and have corner radii of not less than ⅛ inch. Handrails shall not interfere with wheelchair or mobility aid maneuverability when entering or leaving the vehicle.

(d) *Securement devices*—(1) *Design load.* Securement systems on vehicles with GVWRs of 30,000 pounds or above, and their attachments to such vehicles, shall restrain a force in the forward longitudinal direction of up to 2,000 pounds per securement leg or clamping mechanism and a minimum of 4,000 pounds for each mobility aid. Securement systems on vehicles with GVWRs of up to 30,000 pounds, and their attachments to such vehicles, shall restrain a force in the forward longitudinal direction of up to 2,500 pounds per securement leg or clamping mechanism and a minimum of 5,000 pounds for each mobility aid.

(2) *Location and size.* The securement system shall be placed as near to the

accessible entrance as practicable and shall have a clear floor area of 30 inches by 48 inches. Not more than 6 inches of the required clear floor space may be accommodated for footrests under another seat provided there is a minimum of 9 inches from the floor to the lowest part of the seat overhanging the space. Securement areas may have fold-down seats to accommodate other passengers when a wheelchair or mobility aid is not occupying the area, provided the seats, when folded up, do not obstruct the clear floor space required. (See Fig. 2)

(3) *Mobility aids accommodated.* The securement system shall secure common wheelchairs and mobility aids and shall either be automatic or easily attached by a person familiar with the system and mobility aid and having average dexterity.

(4) *Orientation.* The securement device or system shall secure the wheelchair or mobility aid facing toward the front of the vehicle.

(5) *Movement.* When the wheelchair or mobility aid is secured in accordance with manufacturer's instructions, the securement system shall limit the movement of an occupied wheelchair or mobility aid to no more than 2 inches in any direction.

(6) *Stowage.* When not being used for securement, or when the securement area can be used by standees, the securement system shall not interfere with passenger movement, shall not present any hazardous condition, shall be reasonably protected from vandalism, and shall be readily accessed when needed for use.

§ 1192.25 Doors, steps and thresholds.

(a) *Slip resistance.* All floors and steps shall have slip-resistant surfaces.

(b) *Contrast.* All step edges and thresholds shall have a band of color(s) running the full width of the step which contrasts from the step tread and riser by 70%, as determined by the formula:

$$\text{Contrast} = [(B1 - B2)/B1] \times 100$$

where:

B1 = light reflectance value (LRV) of brighter area, and

B2 = light reflectance value (LRV) of darker area.

(c) *Step height and risers.* The height from the ground to the first step shall not exceed 14 inches at the front door and 16 inches at the rear side door. All stair risers shall not exceed 8 inches and the tread depth shall not be less than 11 inches.

(d) *Clear width and closing force*—(1) *Requirements.* All doors shall have a minimum clear width when open of 32 inches. A door shall not require more than 15 lbf (66 N) to prevent it from closing at any point in the closing cycle.

(2) *Exception.* Where a bus body structural member would preclude a door with a minimum 32 inch clear width, the minimum clear width shall be as close to 32 inches as possible but in no case less than 30 inches.

§ 1192.27 Priority seating signs.

(a) Each vehicle shall contain sign(s) which indicate that seats in the front of the vehicle are priority seats for persons with disabilities, and that other passengers should make such seats available to those who wish to use them. At least one set of forward-facing seats shall be so designated.

(b) Each securement location shall have a sign designating it as such.

(c) Characters on signs shall have a width-to-height ratio between 3:5 and 1:1 and a stroke width-to-height ratio between 1:5 and 1:10, with a minimum character height (using an upper case "X") of ⅝ inch, with "wide" spacing (generally, the space between letters shall be 1/16 the height of upper case letters), and shall contrast with the background by 70%, as determined by the formula in § 1192.25(b).

§ 1192.29 Interior circulation, handrails and stanchions.

(a) Interior handrails and stanchions shall permit ample turning and maneuvering space for wheelchairs and other mobility aids to reach a securement location from the lift or ramp.

(b) Handrails and stanchions shall be provided in the entrance to the vehicle in a configuration which allows persons with disabilities to grasp such assists from outside the vehicle while starting to board, and to continue using such assists throughout the boarding and fare collection process. These assists shall have sufficient clearance from the driver's barrier to prevent inadvertent wedging of a passenger's arm. Where on-board fare boxes are provided, a horizontal passenger assist shall be located across the front of the vehicle and shall prevent passengers from sustaining injuries on the fare collection device or windshield in the event of a sudden deceleration. Without restricting the vestibule space, the assist shall provide support for a boarding passenger from the front door through the boarding procedure. Passengers shall be able to lean against the asist for security while paying fares.

(c) Overhead handrail(s) shall be provided which shall be continuous except for a gap at the rear doorway.

(d) Handrails and stanchions shall be sufficient to permit safe boarding, on-board circulation, seating and standing assistance, and alighting by persons with disabilities.

(e) For vehicles with front-door lifts or ramps, vertical stanchions immediately behind the driver shall either terminate at the lower edge of the aisle-facing seats, if applicable, or be "dog-legged" so that the floor attachment does not impede or interfere with wheelchair footrests. The driver seat platform, to the maximum extent feasible, shall not extend into the aisle or vestibule beyond the wheel housing.

§ 1192.31 Lighting.

(a) Any stepwell or doorway immediately adjacent to the driver shall have, when the door is open, at least 2 foot-candles of illumination measured on the step tread or lift platform.

(b) Other stepwells and doorways, including doorways in which lifts or ramps are installed, shall have, at all times, at least 2 foot-candles of illumination measured on the step tread, or lift or ramp, when deployed at the vehicle floor level.

(c) The vehicle doorways shall have outside light(s) which provide at least 1 foot-candle of illumination on the street surface for a distance of 3 feet from all points on the bottom step tread or lift or ramp outboard edge. Such light(s) shall be located below window level and shielded to protect the eyes of entering and exiting passengers.

§ 1192.33 Fare box.

Where provided, the farebox shall be located as far forward as practicable and shall not obstruct traffic in the vestibule, especially wheelchairs or mobility aids.

§ 1192.35 Public information system.

(a) Each vehicle shall be equipped with a public address system permitting the driver, or recorded or digitized human speech messages, to announce stops and provide other passenger information within the vehicle and outside the front door.

(b) An information system shall be provided which is capable of providing the same or equivalent information to hearing impaired persons using an assistive listening system (e.g., magnetic inductive loops) or other appropriate technology or service.

§ 1192.37 Stop request.

(a) Where passengers may board or alight at multiple stops at their option, each vehicle shall provide controls adjacent to the securement location for requesting stops and which alerts the driver that a mobility aid user wishes to disembark. Such a system shall provide

auditory and visual indications that the request has been made.

(b) Controls shall be mounted no higher than 48 inches and no lower than 15 inches above the floor, shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist. The force required to activate controls shall be no greater than 5 lbf (22.2 N).

§ 1192.39 Destination and route signs.

(a) Where destination or route information is displayed on the exterior of a vehicle, each vehicle shall have illuminated signs on the front and boarding side of the vehicle.

(b) Characters on signs shall have a width-to-height ratio between 3:5 and 1:1 and a stroke width-to-height ratio between 1:5 and 1:10, with a minimum character height (using an upper case "X") of 1 inch for signs on the boarding side and a minimum character height of 2 inches for front "headsigns", with "wide" spacing (generally, the space between letters shall be 1/16 the height of upper case letters), and shall contrast with the background by 70%, as determined by the formula in § 1192.25(b).

Subpart C—Rapid Rail Vehicles and Systems.

§ 1192.51 General.

(a) New, used and remanufactured rapid rail vehicles, to be considered accessible by regulations issued by the Department of Transportation in 49 CFR part 37, shall comply with this subpart.

(b) If portions of the vehicle are modified in such a way that it affects or could affect accessibility, each such portion shall comply, to the extent practicable, with the applicable provisions of this subpart. This provision does not require that inaccessible vehicles be retrofitted with lifts, ramps or other boarding devices.

§ 1192.53 Doorways.

(a) *Clear width and closing force.* Passenger doorways on vehicle sides shall have clear openings at least 32 inches wide when open. Doorways at ends of vehicles shall have clear openings of 30 inches to permit wheelchair and mobility aid users to be evacuated to an adjoining vehicle in an emergency. Automatic doors shall not require more than 15 lbf (66 N) to prevent closing at any point in the closing cycle. The closing speed shall be one foot per second maximum.

(b) *Signage.* The international symbol of accessibility shall be displayed on the exterior of accessible vehicles operating on an accessible rapid rail system unless all vehicles are accessible, in which case no symbol shall be displayed.

(c) *Signals.* Auditory and visual warning signals shall be provided to alert passengers of closing doors.

(d) *Coordination with boarding platform*—(1) *Requirements.* Where the vehicle will operate in an accessible station, the design of vehicles shall be coordinated with the boarding platform design such that the horizontal gap between a vehicle door at rest and the platform shall be no greater than 3 inches and the height of the vehicle floor shall be plus or minus 5/8 inch of the platform height under all normal passenger load conditions. Vertical alignment may be accomplished by vehicle air suspension or other suitable means of meeting the requirement.

(2) *Exception.* New vehicles operating in existing stations may have a floor height plus or minus 1½ inches of the platform height provided the horizontal gap is no greater than 2½ inches.

§ 1192.55 Priority seating signs.

(a) Each vehicle shall contain sign(s) which indicate that certain seats are priority seats for persons with disabilities, and that other passengers should make such seats available to those who wish to use them.

(b) Characters on signs shall have a width-to-height ratio between 3:5 and 1:1 and a stroke width-to-height ratio between 1:5 and 1:10, with a minimum character height (using an upper case "X") of ⅝ inch, with "wide" spacing (generally, the space between letters shall be 1/16 the height of upper case letters), and shall contrast with the background by 70%, as determined by the formula:

$$\text{Contrast} = [(B1 - B2)/B1] \times 100$$

where:

B1 = light reflectance value (LRV) of brighter area, and

B2 = light reflectance value (LRV) of darker area.

§ 1192.57 Interior circulation, handrails and stanchions.

(a) Handrails and stanchions shall be provided to assist safe boarding, on-board circulation, seating and standing assistance, and alighting by persons with disabilities.

(b) Handrails, stanchions, and seats shall allow a wheelchair or mobility aid user to enter the vehicle and position the wheelchair or mobility aid in an area, having a minimum clear space of 48 inches by 30 inches, which does not prevent movement of other passengers. Particular attention shall be given to ensuring maximum maneuverability immediately inside doors. Ample vertical stanchions from ceiling to seat-back rails shall be provided. Vertical stanchions from ceiling to floor shall not interfere with wheelchair or mobility aid circulation and shall be kept to a minimum in the vicinity of doors.

(c) The diameter or width of the gripping surface of handrails and stanchions shall be 1¼ inches to 1½ inches or provide an equivalent gripping surface.

§ 1192.59 Floor surfaces.

All floors shall have slip-resistant surfaces.

§ 1192.61 Public information system.

(a)(1) *Requirements.* Each vehicle shall be equipped with a public address system permitting transportation system personnel, or recorded or digitized human speech messages, to announce stations and provide other passenger information. Alternative systems or devices which provide equivalent access are also permitted. At least one vehicle in each train shall have an external public address system to permit transportation system personnel, or recorded or digitized human speech messages, to announce train, route, or line identification information.

(2) *Exception.* Where station announcement systems provide information on arriving trains, an external train speaker is not required.

(b) [Reserved]

§ 1192.63 Between-car barriers.

(a) *Requirement.* Suitable devices or systems shall be provided to prevent individuals from inadvertently stepping off the platform between cars. Acceptable solutions include, but are not limited to, pantograph gates, chains, motion detectors or similar devices.

(b) *Exception.* Between-car barriers are not required where platform screens are provided which close off the platform edge and only open when trains are correctly aligned with the doors.

Subpart D—Light Rail Vehicles and Systems

§ 1192.71 General.

(a) New, used and remanufactured light rail vehicles, to be considered accessible by regulations issued by the Department of Transportation in 49 CFR part 37, shall comply with this subpart.

(b)(1) Vehicles intended to be operated solely in light rail systems confined to a dedicated right-of-way, and for which all stations or stops are designed and constructed for revenue service after January 26, 1993, shall

provide level boarding and shall comply with §§ 1192.73(d)(1) and 1192.85.

(2) Vehicles designed for, and operated on, pedestrian malls, city streets, or other areas where level boarding is not feasible shall provide wayside or car-borne lifts, mini-high platforms, or other means of access in compliance with § 1192.83 (b) or (c).

(c) If portions of the vehicle are modified in such a way that it affects or could affect accessibility, each such portion shall comply, to the extent practicable, with the applicable provisions of this subpart. This provision does not require that inaccessible vehicles be retrofitted with lifts, ramps or other boarding devices.

§ 1192.73 Doorways.

(a) *Clear width and closing force.* All passenger doorways on vehicle sides shall have minimum clear openings of 32 inches when open. Where multi-vehicle trains are operated with doors between vehicles, doorways at ends of vehicles shall have minimum clear openings of 30 inches to permit wheelchair and mobility aid users to be evacuated to an adjoining vehicle in an emergency. Automatic doors shall not require more than 15 lbf (66 N) to prevent closing at any point in the closing cycle. The closing speed shall be one foot per second maximum.

(b) *Signage.* The international symbol of accessibility shall be displayed on the exterior of each vehicle operating on an accessible light rail system unless all vehicles are accessible, in which case no symbol shall be displayed.

(c) *Signals.* Auditory and visual warning signals shall be provided to alert passengers of closing doors.

(d) *Coordination with boarding platform* (1) *Requirements.* The design of level-entry vehicles shall be coordinated with the boarding platform design so that the horizontal gap between a vehicle at rest and the platform shall be no greater than 3 inches and the height of the vehicle floor shall be plus or minus ⅝ inch of the platform height. Vertical alignment may be accomplished by vehicle air suspension, automatic ramps or lifts, or any combination.

(2) *Exception.* New vehicles operating in existing stations may have a floor height plus or minus 1½ inches of the platform height provided the horizontal gap is no greater than 2½ inches.

(3) *Exception.* Where it is not operationally or structurally feasible to meet the horizontal or vertical requirements, platform or vehicle devices complying with § 1192.83(b) or platform or vehicle mounted ramps or bridge plates complying with § 1192.83(c) shall be provided.

§ 1192.75 Priority seating signs.

(a) Each vehicle shall contain sign(s) which indicate that certain seats are priority seats for persons with disabilities, and that other passengers should make such seats available to those who wish to use them.

(b) Where designated wheelchair or mobility aid seating locations are provided, signs shall indicate the location and advise other passengers of the need to permit wheelchair and mobility aid users to occupy them.

(c) Characters on signs shall have a width-to-height ratio between 3:5 and 1:1 and a stroke width-to-height ratio between 1:5 and 1:10, with a minimum character height (using an upper case "X") of 5/8 inch, with "wide" spacing (generally, the space between letters shall be 1/16 the height of upper case letters), and shall contrast with the background by 70%, as determined by the formula of § 1192.79(b).

§ 1192.77 Interior circulation, handrails and stanchions.

(a) Handrails and stanchions shall be sufficient to permit safe boarding, on-board circulation, seating and standing assistance, and alighting by persons with disabilities.

(b) At entrances equipped with steps, handrails and stanchions shall be provided in the enterance to the vehicle in a configuration which allows passengers to grasp such assists from outside the vehicle while starting to board, and to continue using such assists throughout the boarding process. These assists shall have sufficient clearance from the driver's barrier to prevent inadvertent wedging of a passenger's arm. Where on-board fare collection devices are used, a horizontal passenger assist shall be located between boarding passengers and the fare collection device and shall prevent passengers from sustaining injuries on the fare collection device or windshield in the event of a sudden deceleration. Without restricting the vestibule space, the assist shall provide support for a boarding passenger from the door through the boarding procedure. Passengers shall be able to lean against the assist for security while paying fares.

(c) At all doors on level-entry vehicles, and at each entrance accessible by lift, ramp or other suitable means, handrails, stanchions, passenger seats, vehicle driver seat platforms, and fare boxes, if applicable, shall be located so as to allow a wheelchair or mobility aid user to enter the vehicle and position the wheelchair or mobility aid in an area having a minimum clear area of 48 inches by 30 inches, which does not prevent the movement of other passengers. Particular attention shall be given to ensuring maximum maneuverability immediately inside doors. Ample vertical stanchions from ceiling to seat-back rails shall be provided. Vertical stanchions from ceiling to floor shall not interfere with wheelchair or mobility aid circulation and shall be kept to a minimum in the vicinity of accessible doors.

(d) The diameter or width of the gripping surface of handrails and stanchions shall be 1¼ inches to 1½ inches or shall provide an equivalent gripping surface.

§ 1192.79 Floors, steps and thresholds.

(a) All floors and steps shall have slip-resistant surfaces.

(b) All thresholds and step edges shall have a band of color(s) running the full width of the step or threshold which contrasts from the step tread and riser or adjacent floor by 70%, as determined by the formula:

$$\text{Contrast} = [(B1 - B2)/B1] \times 100$$

where:

B1 = light reflectance value (LRV) of brighter area, and

B2 = light reflectance value (LRV) of darker area.

(c) The height from the ground to the first step shall not exceed [ ] inches. All stair risers shall not exceed [ ] inches and the tread depth shall not be less than [ ] inches. [See preamble Question 37 for options.]

§ 1192.81 Lighting.

(a) Any stepwell or doorway with a lift, ramp or bridge plate immediately adjacent to the driver shall have, when the door is open, at least 2 footcandles of illumination measured on the step tread or lift platform.

(b) Other stepwells and doorways with lifts, ramps or bridge plates shall have, at all times, at least 2 footcandles of illumination measured on the step tread or lift or ramp, when deployed at the vehicle floor level.

(c) The doorways of vehicles not operating at lighted station platforms shall have outside lights which provide at least 1 footcandle of illumination on the station platform or street surface for a distance of 3 feet from all points on the bottom step tread, lift platform, ramp or bridge plate edge. Such lights shall be located below window level and shielded to protect the eyes of entering and exiting passengers.

§ 1192.83 Mobility aid accessibility.

(a)(1) *General.* All new light rail vehicles, other than level entry vehicles, covered by this subpart shall provide a level-change mechanism or boarding device (e.g., lift, ramp or bridge plate) complying with either paragraph (b) or (c) of this section and sufficient clearances to permit a wheelchair or other mobility aid user to reach a location, with a minimum clear floor area of 48 inches by 30 inches, which does not prevent passenger flow.

(2) *Exception.* If lifts, ramps or bridge plates meeting the requirements of this section are provided on station platforms or other stops, the vehicle is not required to be equipped with a car-borne device.

(b) *Vehicle lift*—(1) *Design load.* The design load of the lift shall be at least 600 pounds. Working parts, such as cables, pulleys, and shafts, which can be expected to wear, and upon which the lift depends for support of the load, shall have a safety factor of at least six, based on the ultimate strength of the material. Nonworking parts, such as platform, frame, and attachment hardware which would not be expected to wear, shall have a safety factor of at least three, based on the ultimate strength of the material.

(2) *Controls*—(i) *Requirements.* The controls shall be interlocked with the vehicle brakes or propulsion system so that the vehicle cannot be moved when the lift is not stowed and so the lift cannot be deployed unless the interlocks are engaged. Each control for deploying, lowering, raising, and stowing the lift and lowering the roll-off barrier shall be of a momentary contact type requiring continuous manual pressure by the operator and shall not allow improper lift sequencing when the lift platform is occupied. The controls shall allow reversal of the lift operation sequence, such as raising or lowering a platform that is part way down, without allowing an occupied platform to fold or retract into the stowed position.

(ii) *Exception.* Where physical or safety constraints prevent the deployment at some stops of a lift having its long dimension perpendicular to the vehicle axis, the transportation identity may specify a lift which is designed to deploy with its long dimension parallel to the vehicle axis and which pivots into or out of the vehicle while occupied (i.e., "rotary lift"). The requirements of paragraph (b)(2)(i) of this section prohibiting the lift from being stowed while occupied shall not apply to a lift design of this type in which the stowed position is within the passenger compartment and which is intended to be stowed while occupied.

(iii) *Exception.* The brake or propulsion system interlocks requirement does not apply to a station platform mounted lift provided that a mechanical, electrical or other system operates to ensure that vehicles cannot move when the lift is in use.

(3) *Emergency operation.* The lift shall incorporate an emergency method of deploying, lowering to ground level with a lift occupant, and raising and stowing the empty lift if the power to the lift fails. No emergency method, manual or otherwise, shall be capable of being operated in a manner that could be hazardous to the lift occupant or to the operator.

(4) *Power or equipment failure.* Lift platforms stowed in a vertical position, and deployed platforms when occupied, shall have provisions to prevent their deploying, falling, or folding any faster than 12 inches/second or their dropping of an occupant in the event of a failure of power, chain, cable or hydraulic hose.

(5) *Platform barriers.* The lift platform shall be equipped with barriers to prevent any of the wheels of a wheelchair or mobility aid from rolling off the lift during its operation. A movable barrier or inherent design feature shall prevent a wheelchair or mobility aid from rolling off the edge closest to the vehicle until the lift is in its fully raised position. Each side of the lift platform which extends beyond the vehicle shall have a barrier a minimum 1½ inches high. Such barriers shall not interfere with entering the vehicle. The loading-edge barrier (roll-off barrier) which functions as a loading ramp when the lift is at ground level, shall be sufficiently high when raised or closed to prevent a power wheelchair or mobility aid from riding over it and shall withstand a static load of 1,600 pounds, applied at a height of 3 inches above and parallel to the platform, for 5 seconds without deflecting more than 5 degrees from the unstressed position. The barrier on the outboard or loading edge of the lift shall automatically rise or close, and remain raised or closed, at all times that the lift is more than 3 inches above the station platform or roadway and the lift is occupied. Alternatively, a barrier may be raised, lowered, opened or closed by the lift operator provided an interlock or inherent design feature prevents the lift from rising unless the barrier is raised or closed.

(6) *Platform surface.* The lift platform surface shall be free of any protrusions over ¼ inch high and shall be slip resistant. The lift platform shall have a minimum clear width of 30 inches measured from the lift platform surface to 30 inches above the surface and a minimum clear length of 48 inches measured from 2 inches above the surface of the platform to 30 inches above the surface. (See Fig. 1)

(7) *Platform gaps.* Any openings between the lift surface and the raised barriers shall not exceed ⅝ inch wide. When the lift is at vehicle floor height with the inner barrier down or retracted, gaps between the forward lift platform edge and vehicle floor shall not exceed ½ inch horizontally and ⅝ inch vertically.

(8) *Platform entrance ramp.* The entrance ramp, or loading-edge barrier used as a ramp, shall not exceed a slope of 1:8, for a maximum rise of 3 inches, and the transition from the station platform or roadway to ramp may be vetical without edge treatment up to ¼ inch. Thresholds between ¼ inch and ½ inch shall be beveled with a slope no greater than 1:2.

(9) *Platform deflection.* The lift platform (not including the entrance ramp) shall not deflect more than 3 degrees in any direction between its unloaded position and its position when loaded with 600 pounds applied through a 26 inch by 26 inch test pallet at the centroid of the lift platform.

(10) *Platform movement.* No part of the lift platform shall move at a rate exceeding 6 inches/second during deployment, lowering, lifting, or stowing. This requirement does not apply to the deployment or stowage cycles of lifts that are manually deployed or stowed. The maximum lift horizontal and vertical acceleration shall be 0.2g.

(11) *Boarding direction.* The lift shall permit both inboard and outboard facing of wheelchairs and mobility aids.

(12) *Use by standees.* Lifts shall accommodate persons using walkers, crutches, canes or braces or who otherwise cannot use steps. The lift may be marked to indicate a preferred standing position.

(13) *Handrails.* Platforms on lifts shall be equipped with handrails, which move in tandem with the lift on both sides which shall be graspable throughout the entire lift operation. Handrails shall have a horizontal or diagonal component at least 12 inches long with the top between 30 inches and 34 inches above the platform. The handrails shall be capable of withstanding a force of 100 pounds concentrated at any point on the handrail without permanent deformation of the rail or its supporting structure. The handrail shall have a cross-sectional diameter between 1¼ inches and 1½ inches or shall provide an equivalent grasping surface, and

have corner radii of not less than ⅛ inch. Handrails shall not interfere with wheelchair or mobility aid maneuverability when entering or leaving the vehicle.

(c) *Vehicle ramp or bridge plate*—(1) *Design load.* Ramps or bridge plates shall support a load of 600 pounds, placed at the centroid of the ramp distributed over an area of 26 inches by 26 inches, with a safety factor of at least 3 based on the ultimate strength of the material.

(2) *Ramp surface.* The ramp or bridge plate surface shall be continuous and slip resistant, shall not have protrusions from the surface greater than ¼ inch; shall have a clear width of 30 inches; and shall accommodate both four-wheel and three-wheel mobility aids.

(3) *Ramp threshold.* The transition from roadway or station platform and the transition from vehicle floor to the ramp or bridge plate may be vertical without edge treatment up to ¼ inch. Changes in level between ¼ inch and ½ inch shall be beveled with a slope no greater than 1:2.

(4) *Ramp barriers.* Each side of the ramp or bridge plate shall have barriers at least 2 inches high to prevent mobility aid wheels from slipping off.

(5) *Slope.* Where a 1:12 slope or less is not feasible, ramps or bridge plates shall have slopes no steeper than 1:8 for no more than a 3 inch rise, or no steeper than 1:10 for a 6 inch rise. The slope shall be measured when the ramp or bridge plate is deployed to its normal operating point such as the roadway or station platform. Folding or telescoping ramps or bridge plates are permitted provided they meet all structural requirements of this section.

(6) *Attachment.*—(i) *Requirement.* When in use for boarding or alighting, the ramp or bridge plate shall be firmly attached to the vehicle so that it is not subject to displacement when loading or unloading a heavy power mobility aid and that any gaps between vehicle and ramp shall not exceed ⅝ inch.

(ii) *Exception.* Ramps or bridge plates which are attached to, and deployed from, station platforms are permitted in lieu of vehicle devices provided they meet the displacement requirements of paragraph (c)(6)(i) of this section.

(7) *Stowage.* Ramps or bridge plates, including portable devices stowed in the passenger area, shall be stowed in such a way that they do not pose any hazard to passengers.

(8) *Handrails.* If provided, handrails shall allow persons with disabilities to grasp them from outside the vehicle while starting to board, and to continue to use them throughout the boarding process, and shall have the top between 30 inches and 34 inches above the ramp surface. The handrails shall be capable of withstanding a force of 100 pounds concentrated at any point on the handrail without permanent deformation of the rail or its supporting structure, the handrail shall have a cross-sectional diameter between 1¼ inches and 1½ inches or shall provide an equivalent grasping surface, and have corner radii of not less than ⅛ inch. Handrails shall not interfere with wheelchair or mobility aid maneuverability when entering or leaving the vehicle.

§ 1192.85 Between-car barriers.

Devices or systems shall be provided where vehicles operate in a high-platform, level-boarding mode to prevent individuals from inadvertently stepping off the platform between cars. Appropriate devices include, but are not limited to, pantograph grates, chains, motion detectors or other suitable devices.

Subpart E—Commuter Rail Cars and Systems

§ 1192.91 General.

(a) New, used and remanufactured commuter rail cars, to be considered accessible by regulations issued by the Department of Transportation in 49 CFR part 37, shall comply with this subpart.

(b) If portions of the car are modified in such a way that it affects or could affect accessibility, each such portion shall comply, to the extent practicable, with the applicable provisions of this subpart. This provision does not require that inaccessible cars be retrofitted with lifts, ramps or other boarding devices.

(c)(i) Commuter rail cars shall comply with § 1192.93(d) for level boarding wherever structurally and operationally feasible.

(ii) Where level boarding is not structurally or operationally feasible, commuter rail cars shall comply with § 1192.95.

§ 1192.93 Doorways.

(a) *Clear width.* All doors opening onto station platforms and all doorways into passenger coach compartments shall have a minimum clear opening of 32 inches. Doorways at ends of cars connecting two adjacent single level cars shall have a minimum clear opening of 30 inches.

(b) *Passageways.* At least one doorway on each side from which passengers board the car shall permit access by persons using mobility aids and shall have an accessible route at least 32 inches wide leading to a seating location complying with § 1192.95(a)(3). In cars where such doorways require passage through a vestibule, such vestibule shall have a minimum width of 42 inches. (see Fig. 3)

(c) *Signals and closing force.* If doors to the platform close automatically or from a remote location, auditory and visual warning signals shall be provided to alert passengers of closing doors. Automatic doors shall not require more than 15 lbf (66 N) to prevent closing at any point in the closing cycle. The closing speed shall be one foot per second maximum.

(d) *Coordination with boarding platform*—(1) *Requirements.* Cars operating in stations with high platforms shall be coordinated with the boarding platform design such that the horizontal gap between a car at rest and the platform shall be no greater than 3 inches and the height of the car floor shall be plus or minus ⅝ inch of the platform height. Vertical alignment may be accomplished by car air suspension, platform lifts or other devices, or any combination.

(2) *Exception.* New vehicles operating in existing stations may have a floor height plus or minus 1½ inches of the platform height provided the horizontal gap is no greater than 2½ inches.

(3) *Exception.* Where platform set-backs do not allow the specified horizontal gap or vertical alignment, car, platform or portable lifts complying with § 1192.95(b), or car or platform ramps or bridge plates, complying with § 1192.95(c), shall be provided.

(e) *Signage.* The international symbol of accessibility shall be displayed on the exterior of all doors complying with this section unless all cars and doors are accessible, in which case no symbol shall be displayed. Appropriate signage shall also indicate which accessible doors are adjacent to an accessible restroom, if applicable.

§ 1192.95 Mobility aid accessibility.

(a)(1) *General.* All new commuter rail cars, other than level entry cars, covered by this subpart shall provide a level-change mechanism or boarding device (e.g., lift, ramp or bridge plate) complying with either paragraph (b) or (c) of this section; sufficient clearances to permit a wheelchair or other mobility aid user to reach a seating location; and at least one mobility aid seating location complying with paragraph (d) of this section.

(2) *Exception.* If portable or platform lifts, ramps or bridge plates meeting the applicable requirements of this section are provided on station platforms or other stops, the car is not required to be equipped with a car-borne device.

(b) *Car lift*—(1) *Design Load.* The design load of the lift shall be at least 600 pounds. Working parts, such as cables, pulleys, and shafts, which can be expected to wear, and upon which the lift depends for support of the load, shall have a safety factor of at least six, based on the ultimate strength of the material. Nonworking parts, such as platform, frame, and attachment hardware which would not be expected to wear, shall have a safety factor of at least three, based on the ultimate strength of the material.

(2) *Controls*—(i) *Requirements.* The controls shall be interlocked with the car brakes or propulsion system so that the car cannot be moved when the lift is not stowed and so the lift cannot be deployed unless the interlocks are engaged. Each control for deploying, lowering, raising, and stowing the lift and lowering the roll-off barrier shall be of a momentary contact type requiring continuous manual pressure by the operator and shall not allow improper lift sequencing when the lift platform is occupied. The controls shall allow reversal of the lift operation sequence, such as raising or lowering a platform that is part way down, without allowing an occupied platform to fold or retract into the stowed position.

(ii) *Exception.* The brake or propulsion system interlocks requirement does not apply to a platform mounted or portable lifts provided that a mechanical, electrical or other system operates to ensure that cars cannot move when the lift is in use.

(3) *Emergency operation.* The lift shall incorporate an emergency method of deploying, lowering to ground level with a lift occupant, and raising and stowing the empty lift if the power to the lift fails. No emergency method, manual or otherwise, shall be capable of being operated in a manner that could be hazardous to the lift occupant or to the operator.

(4) *Power or equipment failure.* Platforms stowed in a vertical position, and deployed platforms when occupied, shall have provisions to prevent their deploying, falling, or folding any faster than 12 inches/second or their dropping of an occupant in the event of a failure of power, chain, cable or hydraulic hose.

(5) *Platform barriers.* The lift platform shall be equipped with barriers to prevent any of the wheels of a wheelchair or mobility aid from rolling off the platform during its operation. A movable barrier or inherent design feature shall prevent a wheelchair or mobility aid from rolling off the edge closest to the car until the lift is in its fully raised position. Each side of the lift platform which extends beyond the car shall have a barrier a minimum 1½ inches high. Such barriers shall not interfere with entering the car. The loading-edge barrier (roll-off barrier) which functions as a loading ramp when the lift is at ground level, shall be sufficiently high when raised or closed to prevent a power wheelchair or mobility aid from riding over it and shall withstand a static load of 1,600 pounds, applied at a height of 3 inches above and parallel to the lift platform, for 5 seconds without deflecting more than 5 degrees from the unstressed position. The barrier on the outboard or loading edge of the lift shall automatically rise or close, and remain raised or closed, at all times that the lift platform is more than 3 inches above the station platform and the lift is occupied. Alternatively, a barrier may be raised, lowered, opened or closed by the lift operator provided an interlock or inherent design feature prevents the lift from rising unless the barrier is raised or closed.

(6) *Platform surface.* The lift platform surface shall be free of any protrusions over ¼ inch high and shall be slip resistant. The lift platform shall have a minimum clear width of 30 inches measured from the lift platform surface to 30 inches above the surface and a minimum clear length of 48 inches measured from 2 inches above the surface of the platform to 30 inches above the surface. (See Fig. 1)

(7) *Platform gaps.* Any openings between the lift platform surface and the raised barriers shall not exceed ⅝ inch wide. When the lift is at car floor height with the inner barrier down or retracted, gaps between the forward lift platform edge and car floor shall not exceed ½ inch horizontally and ⅝ inch vertically.

(8) *Platform entrance ramp.* The entrance ramp, or loading-edge barrier used as a ramp, shall not exceed a slope of 1:8, for a maximum rise of 3 inches, and the transition from station platform to ramp may be vertical without edge treatment up to ¼ inch. Thresholds between ¼ inch and ½ inch shall be beveled with a slope no greater than 1:2.

(9) *Platform deflection.* The lift platform (not including the entrance ramp) shall not deflect more than 3 degrees in any direction between its unloaded position and its position when loaded with 600 pounds applied through a 26 inch by 26 inch test pallet at the centroid of the lift platform.

(10) *Platform movement.* No part of the lift platform shall move at a rate exceeding 6 inches/second during deployment, lowering, lifting, or stowing. This requirement does not apply to the deployment or stowage cycles of lifts that are manually deployed or stowed. The maximum lift horizontal and vertical acceleration shall be 0.2g.

(11) *Boarding direction.* The lift shall permit both inboard and outboard facing of wheelchairs and mobility aids.

(12) *Use by standees.* Lifts shall accommodate persons using walkers, crutches, canes or braces or who otherwise cannot use steps. The lift may be marked to indicate a preferred standing position.

(13) *Handrails.* Platforms on lifts shall be equipped with handrails, which move in tandem with the lift, on both sides which shall be graspable throughout the entire lift operation. Handrails shall have a horizontal or diagonal component at least 12 inches long with the top between 30 inches and 34 inches above the platform. The handrails shall be capable of withstanding a force of 100 pounds concentrated at any point on the handrail without permanent deformation of the rail or its supporting structure. The handrail shall have a cross-sectional diameter between 1¼ inches and 1½ inches or shall provide an equivalent grasping surface, and have corner radii of not less than ⅛ inch. Handrails shall not interfere with wheelchair or mobility aid maneuverability when entering or leaving the car.

(c) *Car ramp or bridge plate*—(1) *Design load.* Ramps or bridge plates shall support a load of 600 pounds, placed at the centroid of the ramp distributed over an area of 26 inches by 26 inches, with a safety factor of at least 3 based on the ultimate strength of the material.

(2) *Ramp surface.* The ramp or bridge plate surface shall be continuous and slip resistant, shall not have protrusions from the surface greater than ¼ inch, shall have a clear width of 30 inches and shall accommodate both four-wheel and three-wheel mobility aids.

(3) *Ramp threshold.* The transition from station platform to the ramp or bridge plate and the transition from car floor to the ramp or bridge plate may be vertical without edge treatment up to ¼ inch. Changes in level between ¼ inch and ½ inch shall be beveled with a slope no greater than 1:2.

(4) *Ramp barriers.* Each side of the ramp or bridge plate shall have barriers at least 2 inches high to prevent mobility aid wheels from slipping off.

(5) *Slope.* Where a 1:12 slope or less is not feasible, ramps or bridge plates shall have slopes no steeper than 1:8 for no more than a 3 inch rise, or no steeper than 1:10 for a 6 inch rise. The slope shall be measured when the ramp or bridge plate is deployed to its normal operating point such as the station

platform Folding or telescoping ramps or bridge plates are permitted provided they meet all structural requirements of this part.

(6) *Attachment*—(i) *Requirement.* When in use for boarding or alighting, the ramp or bridge plate shall be firmly attached to the car so that it is not subject to displacement when loading or unloading a heavy power mobility aid and that any gaps between car and ramp shall not exceed ⅝ inch.

(ii) *Exception.* Ramps or bridge plates which are attached to, and deployed from, station platforms are permitted in lieu of car devices provided they meet the displacement requirements of paragraph (c)(6)(i) of this section.

(7) *Stowage.* Ramps or bridge plates, including portable devices stowed in the passenger area, shall be stowed in such a way that they do not pose any hazard to passengers.

(8) *Handrails.* If provided, handrails shall allow persons with disabilities to grasp them from outside the vehicle while starting to board, and to continue to use them throughout the boarding process, and shall have the top between 30 inches and 34 inches above the ramp surface. The handrails shall be capable of withstanding a force of 100 pounds concentrated at any point on the handrail without permanent deformation of the rail or its supporting structure. The handrail shall have a cross-sectional diameter between 1¼ inches and 1½ inches or shall provide an equivalent grasping surface, and have corner radii of not less than ⅛ inch. Handrails shall not interfere with wheelchair or mobility aid maneuverability when entering or leaving the vehicle.

(d) *Mobility aid seating location.* Spaces for persons who wish to remain in their wheelchairs or mobility aids shall have a minimum clear floor area 48 inches by 30 inches. Such spaces shall adjoin or overlap an accessible route. Such space may have fold-down or removable seats for use when not occupied by a wheelchair or mobility aid user. (See Fig. 2)

§ 1192.97 Interior circulation, handrails and stanchions.

(a) Where provided, interior handrails or stanchions shall be placed to permit ample turning and maneuvering space for wheelchairs and other mobility aids to reach a seating location, complying with § 1192.95(d), from an accessible entrance.

(b) Where provided, handrails or stanchions shall be sufficient to permit safe boarding, on-board circulation, seating and standing assistance, and alighting by persons with disabilities.

(c) At entrances equipped with steps, handrails or stanchions shall be provided in the entrance to the car in a configuration which allows passengers to grasp such assists from outside the car while starting to board, and to continue using such assists throughout the boarding process.

(d) The diameter or width of the gripping surface of handrails and stanchions shall be 1¼ inches to 1½ inches or shall provide an equivalent gripping surface.

§ 1192.99 Floors, steps and thresholds.

(a) All floors and steps shall have slip-resistant surfaces.

(b) All step edges and thresholds shall have a band of color(s) running the full width of the step or threshold which contrasts from the step tread and riser or adjacent floor by 70%, as determined by the formula:

$$\text{Contrast} = [(B1-B2)/B1] \times 100$$

where:

B1 = light reflectance value (LRV) of brighter area, and

B2 = light reflectance value (LRV) of darker area.

(c) The height from the platform to the first step shall not exceed [ ] inches. All stair risers shall not exceed [ ] inches and the tread depth shall not be less than [ ] inches. [See preamble Question 45 for options.]

§ 1192.101 Lighting.

(a) Any stepwell or doorway with a lift, ramp or bridge plate shall have, when the door is open, at least 2 footcandles of illumination measured on the step tread, ramp, bridge plate, or lift platform.

(b) The doorways of cars not operating at lighted station platforms shall have outside lights which provide at least 1 footcandle of illumination on the station platform surface for a distance of 3 feet from all points on the bottom step tread, ramp, bridge plate or lift platform edge. Such lights shall be located below window level and shielded to protect the eyes of entering and exiting passengers.

§ 1192.103 Public information system.

(a) Each car shall be equipped with a public address system permitting transportation system personnel, or recorded or digitized human speech messages, to announce stations and provide other passenger information.

(b) [Reserved]

§ 1192.105 Priority seating signs.

(a) Each car shall contain sign(s) which indicate that certain seats are priority seats for persons with disabilities and that other passengers should make such seats available to those who wish to use them.

(b) Characters on signs shall have a width-to-height ratio between 3:5 and 1:1 and a stroke width-to-height ratio between 1:5 and 1:10, with a minimum character height (using an upper case "X") of ⅝ inch, with "wide" spacing (generally, the space between letters shall be ⅛ the height of upper case letters), and shall contrast with the background by 70%, as determined by the formula of § 1192.99(b).

§ 1192.107 Restrooms.

(a) If a restroom is provided for the general public, it shall be designed so as to allow a person using a wheelchair or mobility aid to enter and use such restroom as specified below.

(1) The minimum clear floor area shall be 35 inches by 60 inches. Permanently installed fixtures may overlap this area a maximum of 6 inches, if the lowest portion of the fixture is a minimum of 9 inches above the floor, and a maximum of 19 inches, if the lowest portion of the fixture is a minimum of 29 inches above the floor, provided such fixtures do not interfere with access to the water closet. Fold-down or retractable seats or shelves may overlap the clear floor space at a lower height provided they can be easily folded up or moved out of the way.

(2) The height of the water closet shall be 17 inches to 19 inches measured to the top of the toilet seat. Seats shall not be sprung to return to a lifted position.

(3) A grab bar at least 24 inches long shall be mounted behind the water closet, and a grab bar at least 40 inches long shall be mounted on at least one side wall, not more than 12 inches from the back wall, at a height between 33 inches and 36 inches above the floor.

(4) Faucets and flush controls shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist. The force required to activate controls shall be no greater than 5 lbf (22.2 N). Controls for flush valves shall be mounted no more than 44 inches above the floor.

(5) Doorways on the end of the enclosure, opposite the water closet, shall have a minimum clear opening of 32 inches. Doorways on the side wall shall have a minimum clear opening of 39 inches. Door latches and hardware shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist.

(b) Restrooms designed to be accessible shall be in close proximity to at least one seating location for persons using mobility aids and shall be connected to such a space by an

unobstructed path having a minimum width of 32 inches.

Subpart F—Intercity Rail Cars and Systems

§ 1192.111 General.

(a) New, used and remanufactured intercity rail cars, to be considered accessible by regulations issued by the Department of Transportation in 49 CFR part 37, shall comply with this subpart to the extent required for each type of car as specified below.

(1) Single-level rail passenger coaches and food service cars (other than single-level dining cars) shall comply with §§ 1192.113 through 1192.123. Compliance with § 1192.125 shall be required only to the extent necessary to meet the requirements of paragraph (d) of this section.

(2) Single-level dining and lounge cars shall have at least one connecting doorway complying with § 1192.113, connected to a car accessible to wheelchairs and mobility aids, and at least one space complying with § 1192.125(d)(2), to provide table service to a person who wishes to remain in his or her wheelchair, and space to fold and store a wheelchair for a person who wishes to transfer to an existing seat.

(3) Bi-level dining cars shall comply with §§ 1192.113(a), 1192.115 (b) through (d), 1192.117 (a) and (b), and 1192.121.

(4) Bi-level lounge cars shall have doors on the lower level, on each side of the car from which passengers board, complying with § 1192.113, a restroom complying with § 1192.123, and at least one space complying with § 1192.125(d)(2) to provide table service to a person who wishes to remain in his or her wheelchair and space to fold and store a wheelchair for a person who wishes to transfer to an existing seat.

(5) Restrooms complying with § 1192.123 shall be provided in single-level rail passenger coaches and food service cars adjacent to the accessible seating locations required by paragraph (d) of this section. Accessible restrooms are required in dining and lounge cars only if restrooms are provided for other passengers.

(6) Sleeper cars shall comply with §§ 1192.113 (b) through (d), 1192.115 (b) through (c), 1192.117 through 1192.121, and 1192.125, and have at least one compartment which can be entered and used by a person using a wheelchair or mobility aid and complying with § 1192.127.

(b)(1) If physically and operationally feasible, intercity rail cars shall comply with § 1192.113(d) for level boarding.

(2) Where level boarding is not structurally or operationally feasible, intercity rail cars shall comply with § 1192.125.

(c) If portions of the car are modified in such a way that it affects or could affect accessibility, each such portion shall comply, to the extent practicable, with the applicable provisions of this subpart. This provision does not require that inaccessible cars be retrofitted with lift, ramps or other boarding devices.

(d) Passenger coaches or food service cars shall have the number of spaces complying with § 1192.125(d)(2) and the number of spaces complying with § 1192.125(d)(3), as required by 49 CFR 37.87.

§ 1192.113 Doorways.

(a) *Clear width.* All doors opening onto station platforms and all doorways into coach passenger compartments shall have a minimum clear opening of 32 inches. Doorways at ends of cars connecting two adjacent cars shall have a minimum clear opening of 32 inches to permit wheelchair and mobility aid users to enter into a single-level dining car, if available, and to be evaculated to an adjoining single-level coach or food service car in an emergency.

(b) *Passageway.* At least one doorway, on each side of the car from which passengers board, of each car required to be accessible by § 1192.111(a) and where the spaces required by § 1192.111(d) are located, shall permit access by persons using mobility aids and shall have an unobstructed passageway at least 32 inches wide leading to an accessible sleeping compartment complying with § 1192.127 or seating locations complying with §1192.125(d). In cars where such doorways require passage through a vestibule, such vestibule shall have a minimum width of 42 inches. (see Fig. 4)

(c) *Signals and closing force.* If doors to the platform close automatically or from a remote location, auditory and visual warning signals shall be provided to alert passengers of closing doors. Automatic doors shall not require more than 15 lbf (66 N) to prevent closing at any point in the closing cycle. The closing speed shall be one foot per second maximum.

(d) *Coordination with boarding platforms*—(1) *Requirements.* Cars which provide levelboarding in stations with high platforms shall be coordinated with the boarding platform design such that the horizontal gap between a car at rest and the platform shall be no greater than 3 inches and the height of the car floor shall be plus or minus ⅝ inch of the platform height. Vertical alignment may be accomplished by car air suspension platform lifts or other devices, or any combination.

(2) *Exception.* New vehicles operating in existing stations may have a floor height plus or minus 1½ inches of the platform height provided the horizontal gap is no greater than 2½ inches.

(3) *Exception.* Where platform set-backs do not allow the specified horizontal gap or vertical alignment, platform or portable lifts complying with § 1192.125(b), or car or platform bridge plates, complying with § 1192.125(c), may be provided.

(e) *Signage.* The international symbol of accessibility shall be displayed on the exterior of all doors complying with this section unless all cars and doors are accessible, in which case no symbol shall be displayed. Appropriate signage shall also indicate which accessible doors are adjacent to an accessible restroom, if applicable.

§ 1192.115 Interior circulation, handrails and stanchions.

(a) Where provided, interior handrails or stanchions shall be designed and placed to permit ample turning and maneuvering space for wheelchairs and other mobility aids to reach a seating location, complying with § 1192.125(d), from an accessible entrance.

(b) Where provided, handrails and stanchions shall be sufficient to permit safe boarding, on-board circulation, seating and standing assistance, and alighting by persons with disabilities.

(c) At entrances equipped with steps, handrails or stanchions shall be provided in the entrance to the car in a configuration which allows passengers to grasp such assists from outside the car while starting to board, and to continue using such assists throughout the boarding process.

(d) The diameter or width of the gripping surface of handrails and stanchions shall be 1¼ inches to 1½ inches or shall provide an equivalent gripping surface.

§ 1192.117 Floors, steps and thresholds.

(a) All floors and steps shall have slip-resistant surfaces.

(b) All step edges and thresholds shall have a band of color(s) running the full width of the step or threshold which contrasts from the step tread and riser or adjacent floor by 70%, as determined by the formula:

$$\text{Contrast} = [(B1 - B2)/B1] \times 100$$

where:

B1 = light reflectance value (LRV) of brighter area, and

B2 = light reflectance value (LRV) of darker area.

(c) The height from the platform to the first step shall not exceed [ ] inches. All stair risers shall not exceed [ ] inches and the tread depth shall not be less than [ ] inches. [See preamble Question 49 for options.]

§ 1192.119 Lighting.

(a) Any stepwell, or doorway with a lift, ramp or bridge plate, shall have, when the door is open, at least 2 footcandles of illumination measured on the step tread, ramp, bridge plate or lift platform.

(b) The doorways of cars not operating at lighted station platforms shall have outside lights which provide at least 1 footcandle of illumination on the station platform surface for a distance of 3 feet from all points on the botton step tread, ramp bridge plate or lift platform edge. Such lights shall be located below window level and shielded to protect the eyes of entering and exiting psssengers.

§ 1192.121 Public information system.

(a) Each car shall be equipped with a public address system permitting transportation system personnel, or recorded or digitized human speech messages, to announce stations and provide other passenger information.

(b) [Reserved]

§ 1192.123 Restrooms.

(a) If a restroom is provided for the general public, and an accessible restroom is required by § 1192.111 (a) and (d), it shall be designed so as to allow a person using a wheelchair or mobility aid to enter and use such restroom as specified below.

(1) The minimum clear floor area shall be 35 inches by 60 inches Permanently installed fixtures may overlap this area a maximum of 6 inches, if the lowest portion of the fixture is a minimum of 9 inches above the floor, and may overlap a maximum of 19 inches, if the lowest portion of the fixture is a minimum of 29 inches above the floor. Fixtures shall not interfere with access to and use of the water closet. Fold-down or retractable seats or shelves may overlap the clear floor space at a lower height provided they can be easily folded up or moved out of the way.

(2) The height of the water closet shall be 17 inches to 19 inches measured to the top of the toilet seat. Seats shall not be sprung to return to a lifted position.

(3) A grab bar at least 24 inches long shall be mounted behind the water closet, and a grab bar at least 40 inches long shall be mounted on at least one side wall, not more than 12 inches from the back wall, at a height between 33 inches and 36 inches above the floor.

(4) Faucets and flush controls shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist. The force required to activate controls shall be no greater than 5 lbf (22.2 N). Controls for flush valves shall be mounted no more than 44 inches above the floor.

(5) Doorways on the end of the enclosure, opposite the water closet, shall have a minimum clear opening of 32 inches. Doorways on the side wall shall have a minimum clear opening of 39 inches Door latches and hardware shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist.

(b) Restrooms required to be accessible shall be in close proximity to at least one seating location for persons using mobility aids complying with § 1192.125(d) and shall be connected to such a space by an unobstructed path having a minimum width of 32 inches.

§ 1192.125 Mobility aid accessibility.

(a)(1) *General.* All intercity rail cars, other than level entry cars, required to be accessible by § 1192.111 (a) and (d) of this subpart shall provide a level-change mechanism or boarding device (e.g., lift, ramp or bridge plate) complying with either paragraph (b) or (c) of this section and sufficient clearances to permit a wheelchair or other mobility aid user to reach a seating location complying with paragraph (d) of this section.

(2) *Exception.* If portable or platform lifts, ramps or bridge plates meeting the applicable requirements of this section are provided on station platforms or other stops, the car is not required to be equipped with a car-borne device.

(b) *Car Lift*—(1) *Design load.* The design load of the lift shall be at least 600 pounds. Working parts, such as cables, pulleys, and shafts which can be expected to wear, and upon which the lift depends for support of the load, shall have a safety factor of at least six, based on the ultimate strength of the material. Nonworking parts, such as platform, frame, and attachment hardware which would not be expected to wear, shall have a safety factor of at least three, based on the ultimate strength of the material.

(2) *Controls*—(i) *Requirements.* The controls shall be interlocked with the car brakes or propulsion system so that the car cannot be moved when the lift is not stowed and so the lift cannot be deployed unless the interlocks are engaged. Each control for deploying, lowering, raising, and stowing the lift and lowering the roll-off barrier shall be of a momentary contact type requiring continuous manual pressure by the operator and shall not allow improper lift sequencing when the lift platform is occupied. The controls shall allow reversal of the lift operation sequence, such as raising or lowering a platform that is part way down, without allowing an occupied platform to fold or retract into the stowed position.

(ii) *Exception.* The brake or propulsion system interlocks requirement does not apply to platform mounted or portable lifts provided that a mechanical, electrical or other system operates to ensure that cars cannot move when the lift is in use.

(3) *Emergency operation.* The lift shall incorporate an emergency method of deploying, lowering to ground level with a lift occupant, and raising and stowing the empty lift if the power to the lift fails. No emergency method, manual or otherwise, shall be capable of being operated in a manner that could be hazardous to the lift occupant or to the operator.

(4) *Power or equipment failure.* Platforms stowed in a vertical position, and deployed platforms when occupied, shall have provisions to prevent their deploying, falling, or folding any faster than 12 inches/second or their dropping of an occupant in the event of a failure of power, chain, cable or hydraulic hose.

(5) *Platform barriers.* The lift platform shall be equipped with barriers to prevent any of the wheels of a wheelchair or mobility aid from rolling off the platform during its operation. A movable barrier or inherent design feature shall prevent a wheelchair or mobility aid from rolling off the edge closest to the car until the lift is in its fully raised position. Each side of the lift platform which extends beyond the car shall have a barrier a minimum of 1½ inches high. Such barriers shall not interfere with entering the car. The loading-edge barrier (roll-off barrier) which functions as a loading ramp when the lift is at ground level, shall be sufficiently high when raised or closed to prevent a power wheelchair or mobility aid from riding over it and shall withstand a static load of 1,600 pounds, applied at a height of 3 inches above and parallel to the lift platform, for 5 seconds without deflecting more than 5 degrees from the unstressed position. The barrier on the outboard or loading edge of the lift shall automatically rise or close, and remain raised or closed, at all times that the lift platform is more than 3 inches above the station platform and the lift is occupied. Alternatively, an outboard barrier may be raised, lowered, opened or closed manually provided an interlock or inherent design feature prevents the lift from rising unless the barrier is raised or closed.

(6) *Platform surface.* The lift platform surface shall be free of any protrusions over ¼ inch high and shall be slip resistant. The lift platform shall have a minimum clear width of 30 inches measured from the lift platform surface to 30 inches above the surface and a minimum clear length of 48 inches measured from 2 inches above the surface of the platform to 30 inches above the suface. (See Fig. 1)

(7) *Platform Gaps.* Any openings between the lift platform surface and the raised barriers shall not exceed ⅝ inch wide. When the lift is at car floor height with the inner barrier down or retracted, gaps between the forward lift platform edge and car floor shall not exceed ½ inch horizontally and ⅝ inch vertically.

(8) *Platform entrance ramp.* The entrance ramp, or loading-edge barrier used as a ramp, shall not exceed a slope of 1:8, for a maximum rise of 3 inches, and the transition from station platform to ramp may be vertical without edge treatment up to ¼ inch. Thresholds between ¼ inch and ½ inch shall be beveled with a slope no greater than 1:2.

(9) *Platform Deflection.* The lift platform (not including the entrance ramp) shall not deflect more than 3 degrees in any direction between its unloaded position and its position when loaded with 600 pounds applied through a 26 inch by 26 inch test pallet at the centroid of the lift platform.

(10) *Platform movement.* No part of the lift platform shall move at a rate exceeding 6 inches/second during deployment, lowering, lifting, or stowing. This requirement does not apply to the deployment or stowage cycles of lifts that are manually deployed or stowed. The maximum lift horizontal and vertical acceleration shall be 0.2g.

(11) *Boarding direction.* The lift shall permit both inboard and outboard facing of wheelchairs and mobility aids.

(12) *Use by standees.* Lifts shall accommodate persons using walkers, crutches, canes or braces or who otherwise cannot use steps. The lift may be marked to indicate a preferred standing position.

(13) *Handrails.* Platforms on lifts shall be equipped with handrails, which move in tandem with the lift, on both sides which shall be graspable throughout the entire lift operation. Handrails shall have a horizontal or diagonal component at least 12 inches long with the top between 30 inches and 34 inches above the platform. The handrails shall be capable of withstanding a force of 100 pounds concentrated at any point on the handrail without permanent deformation of the rail or its supporting structure. The handrail shall have a cross-sectional diameter between 1¼ inches and 1½ inches or shall provide an equivalent grasping surface, and have corner radii of not less than ⅛ inch. Handrails shall not interfere with wheelchair or mobility aid maneuverability when entering or leaving the car.

(c) *Car ramp or bridge plate*—(1) *Design load.* Ramps or bridge plates shall support a load of 600 pounds, placed at the centroid of the ramp distributed over an area of 26 inches by 26 inches, with a safety factor of at least 3 based on the ultimate strength of the material.

(2) *Ramp surface.* The ramp or bridge plate surface shall be continuous and slip resistant, shall not have protrusions from the surface greater than ¼ inch, shall have a clear width of 30 inches and shall accommodate both four-wheel and three-wheel mobility aids.

(3) *Ramp threshold.* The transition from station platform to the ramp or bridge plate and the transition from car floor to the ramp or bridge plate may be vertical without edge treatment up to ¼ inch. Changes in level between ¼ inch and ½ inch shall be beveled with a slope no greater than 1:2.

(4) *Ramp barriers.* Each side of the ramp or bridge plate shall have barriers at least 2 inches high to prevent mobility aid wheels from slipping off.

(5) *Slope.* Where a 1:12 slope or less is infeasible, ramps or bridge plates shall have slopes no steeper than 1:8 for no more than a 3-inch rise, or no steeper than 1:10 for a 6-inch rise. The slope shall be measured when the ramp or bridge plate is deployed to its normal operating point such as the station platform. Folding or telescoping ramps or bridge plates are permitted provided they meet all structural requirements of this section.

(6) *Attachment*—(i) *Requirement.* When in use for boarding or alighting, the ramp or bridge plate shall be firmly attached to the car so that it is not subject to displacement when loading or unloading a heavy power mobility aid and that any gaps between car and ramp shall not exceed ⅝ inch.

(ii) *Exception.* Ramps or bridge plates which are attached to, and deployed from, station platforms are permitted in lieu of car devices provided they meet the displacement requirements of paragraph (c)(6)(i) of this section.

(7) *Stowage.* Ramps or bridge plates, including portable devices stowed in the passenger area, shall be stowed in such a way that they do not pose any hazard to passengers.

(8) *Handrails.* If provided, handrails shall allow persons with disabilities to grasp them from outside the vehicle while starting to board, and to continue to use them throughout the boarding process, and shall have the top between 30 inches and 34 inches above the ramp surface. The handrails shall be capable of withstanding a force of 100 pounds concentrated at any point on the handrail without permanent deformation of the rail or its supporting structure. The handrail shall have a cross-sectional diameter between 1¼ inches and 1½ inches or shall provide an equivalent grasping surface, and have corner radii of not less than ⅛ inch. Handrails shall not interfere with wheelchair or mobility aid maneuverability when entering or leaving the vehicle.

(d) *Seating*—(1) *Requirements.* All intercity rail cars required to be accessible by § 1192.111 (a) and (d) of this subpart shall provide at least one, but not more than two, mobility aid seating location(s) complying with paragraph (d)(2) of this section; and at least one, but not more than two, seating locations complying with paragraph (d)(3) of this section which adjoin or overlap an accessible route with a minimum clear width of 32 inches.

(2) *Wheelchair spaces.* Spaces for persons who wish to remain in their wheelchairs or mobility aids shall have a minimum clear floor area 48 inches by 30 inches. Such space may have fold-down or removable seats for use when not occupied by a wheelchair or mobility aid user. (See Fig. 2.)

(3) *Other spaces.* Spaces for individuals who wish to transfer shall include a regular coach seat or dining car booth or table seat and space to fold and store the passenger's wheelchair.

§ 1192.127 Sleeping compartments.

(a) Sleeping compartments required to be accessible shall be designed so as to allow a person using a wheelchair or mobility aid to enter and use such compartment. (See Fig. 5.)

(b) Each accessible compartment shall contain a restroom complying with § 1192.123(a) which can be entered directly from such compartment.

(c) Controls and operating mechanisms (e.g., heating and air conditioning controls, lighting controls, call buttons, electrical outlets, etc.) shall be mounted no more than 48 inches, and no less than 15 inches, above the floor and shall have a clear floor area directly in front a minimum of 30 inches by 48 inches. Controls and operating mechanisms shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist.

Subpart G—Vans and Small Buses

§ 1192.131 General.

(a) New and used vehicles of GVWR less than 19,500 pounds, to be considered accessible by regulations issued by the Department of Transportation in 49 CFR part 37, shall comply with this subpart.

(b) If portions of the vehicle are modified in such a way that it affects or could affect accessibility, each such portion shall comply, to the extent practicable, with the applicable provisions of this subpart. This provision does not require that inaccessible vehicles be retrofitted with lifts, ramps or other boarding devices.

§ 1192.133 Mobility aid accessibility.

(a) *General.* Vehicles covered by this section shall provide a level-change mechanism (e.g., lift or ramp) complying with paragraph (b) or (c) of this section; sufficient clearances to permit a wheelchair or other mobility aid user to reach a securement location; and at least one securement device complying with paragraph (d) of this section.

(b) *Vehicle lift*—(1) *Design load.* The design load of the lift shall be at least 600 pounds. Working parts, such as cables, pulleys, and shafts, which can be expected to wear, and upon which the lift depends for support of the load, shall have a safety factor of at least six, based on the ultimate strength of the material. Nonworking parts, such as platform, frame, and attachment hardware which would not be expected to wear, shall have a safety factor of at least three, based on the ultimate strength of the material.

(2) *Controls*—(i) *Requirements.* The controls shall be interlocked with the vehicle brakes or transmission, or shall provide other appropriate fail-safe mechanisms or systems, to ensure that the vehicle cannot be moved when the lift is not stowed and so the lift cannot be deployed unless the interlocks or systems are engaged. Where provided, each control for deploying, lowering, raising, and stowing the lift and lowering the roll-off barrier shall be of a momentary contact type requiring continuous manual pressure by the operator and shall not allow improper lift sequencing when the lift platform is occupied. The controls shall allow reversal of the lift operation sequence, such as raising or lowering a platform that is part way down, without allowing an occupied platform to fold or retract into the stowed position.

(ii) *Exception.* Where the lift is designed to deploy with its long dimension parallel to the vehicle axis and which pivots into or out of the vehicle while occupied (i.e., "rotary lift"), the requirements of this paragraph prohibiting the lift from being stowed while occupied shall not apply since, in this design the stowed position is within the passenger compartment and the lift is intended to be stowed while occupied.

(3) *Emergency operation.* The lift shall incorporate an emergency method of deploying, lowering to ground level with a lift occupant, and raising and stowing the empty lift if the power to the lift fails. No emergency method, manual or otherwise, shall be capable of being operated in a manner that could be hazardous to the lift occupant or to the operator.

(4) *Power or equipment failure.* Platforms stowed in a vertical position, and deployed platforms when occupied, shall have provisions to prevent their deploying, falling, or folding any faster than 12 inches/second or their dropping of an occupant in the event of a failure of power, chain, cable or hydraulic hose.

(5) *Platform barriers.* The lift platform shall be equipped with barriers to prevent any of the wheels of a wheelchair or mobility aid from rolling off the platform during its operation. A movable barrier or inherent design feature shall prevent a wheelchair or mobility aid from rolling off the edge closest to the vehicle until the platform is in its fully raised position. Each side of the lift platform which extends beyond the vehicle shall have a barrier a minimum 1½ inches high. Such barriers shall not interfere with entering the vehicle. The loading-edge barrier (roll-off barrier) which functions as a loading ramp when the lift is at ground level, shall be sufficiently high when raised or closed to prevent a power wheelchair or mobility aid from riding over it and shall withstand a static load of 1,600 pounds, applied at a height of 3 inches above and parallel to the platform, for 5 seconds without deflecting more than 5 degrees from the unstressed position. The barrier on the outboard or loading edge of the lift shall automatically raise or close, and remain raised or closed, at all times that the platform is more than 3 inches above the roadway or sidewalk and the lift platform is occupied. Alternatively, a barrier may be raised, lowered, opened or closed manually provided an interlock or inherent design feature prevents the lift from rising unless the barrier is raised or closed.

(6) *Platform surface.* The platform surface shall be free of any protrusions over ¼ inch high and shall be slip resistant. The platform shall have a minimum clear width of 30 inches measured from the platform surface to 30 inches above the platform and a minimum clear length of 48 inches measured from 2 inches above the surface of the platform to 30 inches above the surface of the platform. (See Fig. 1)

(7) *Platform gaps.* Any openings between the platform surface and the raised barriers shall not exceed ⅝ inch wide. When the platform is at vehicle floor height with the inner barrier (if applicable) down or retracted, gaps between the forward edge of the lift platform and vehicle floor shall not exceed ½ inch horizontally and ⅝ inch vertically. Platforms on semi-automatic lifts may have a hand hold not exceeding 1½ inches by 4½ inches located midway between the edge barriers.

(8) *Platform entrance ramp.* The entrance ramp, or loading-edge barrier used as a ramp, shall not exceed a slope of 1:8, for a maximum rise of 3 inches, and the transition from roadway or sidewalk to ramp may be vertical without edge treatment up to ¼ inch. Thresholds between ¼ inch and ½ inch shall be beveled with a slope no greater than 1:2.

(9) *Platform deflection.* The lift platform (not including the entrance ramp) shall not deflect more than 3 degrees in any direction between its unloaded position and its position when loaded with 400 pounds distributed over an area of 26 inches by 26 inches located at the centroid of the lift platform.

(10) *Platform movement.* No part of the platform shall move at a rate exceeding 6 inches/second during deployment, lowering, lifting, or stowing. This requirement does not apply to the deployment or stowage cycles of lifts that are manually deployed or stowed.

(11) *Boarding direction.* The lift shall permit both inboard and outboard facing of wheelchairs and mobility aids.

(12) *Handrails.* Platforms on lifts shall be equipped with handrail(s), which move(s) in tandem with the lift, on at least one side which shall be graspable throughout the entire lift operation. Handrails shall have a horizontal component at least 12 inches long with the top between 30 inches and 34 inches above the platform. The handrails shall be capable of withstanding a force of 100 pounds concentrated at any point on the handrail without permanent deformation of the rail or its supporting structure. The handrail shall have a cross-sectional diameter between 1¼ inches and 1½ inches or shall provide an equivalent grasping surface, and have corner radii of not less than ⅛ inch. Handrails shall not interfere with wheelchair or mobility aid

maneuverability when entering or leaving the vehicle.

(c) *Vehicle ramp*—(1) *Design load.* Ramps shall support a load of 600 pounds, placed halfway up the ramp distributed over an area of 26 inches by 26 inches, with a safety factor of at least 3 based on the ultimate strength of the material.

(2) *Ramp surface.* The ramp surface shall be continuous and slip resistant, shall not have protrusions from the surface greater than ¼ inch, shall have a clear width of 30 inches and shall accommodate both four-wheel and three-wheel mobility aids.

(3) *Ramp threshold.* The transition from roadway or sidewalk and the transition from vehicle floor to the ramp may be vertical without edge treatment up to ¼ inch. Changes in level between ¼ inch and ½ inch shall be beveled with a slope no greater than 1:2.

(4) *Ramp barriers.* Each side of the ramp shall have barriers at least 2 inches high to prevent mobility aid wheels from slipping off.

(5) *Slope.* Where and a slope of 1:12 is not feasible, ramps shall have slopes no steeper than 1:8 for no more than a 3 inch rise, or no steeper than 1:10 for a 6 inch rise. The slope shall be measured when the ramp is deployed to its normal operating point. Folding or telescoping ramps are permitted provided they meet all structural requirements of this section.

(6) *Attachment.* When in use for boarding or alighting, the ramp shall be firmly attached to the vehicle so that it is not subject to displacement when loading or unloading a heavy power mobility aid and that any gaps between vehicle and ramp shall not exceed ⅝-inch.

(7) *Stowage.* Ramps, including portable ramps stowed in the passenger area, shall be stowed in such a way that they do not pose any hazard to passengers.

(8) *Handrails.* If provided, handrails shall be provided in the entrance to the vehicle in a configuration which allows passengers to grasp such assists from outside the vehicle while starting to board, and to continue using such assists throughout the boarding process. Handrails shall have the top between 30 inches and 34 inches above the ramp surface. The handrails shall be capable of withstanding a force of 100 pounds concentrated at any point on the handrail without permanent deformation of the rail or its supporting structure. The handrail shall have a cross-sectional diameter between 1¼ inches and 1½ inches or shall provide an equivalent grasping surface, and have corner radii of not less than ⅛ inch. Handrails shall not interfere with wheelchair or mobility aid maneuverability when entering or leaving the vehicle.

(d) *Securement devices*—(1) *Design load.* Securement systems, and their attachments to such vehicles, shall withstand a force in a forward longitudinal direction of 2,500 pounds per securement leg or clamping mechanism and a minimum of 5,000 pounds for each mobility aid.

(2) *Location and size.* The securement system shall be placed as near to the accessible entrance as practicable and shall have a clear floor area of 30 inches by 48 inches. Not more than 6 inches of the required clear floor space may be accommodated for footrests under another seat provided there is a minimum of 9 inches from the floor to the lowest part of the seat overhanging the space. Securement areas may have fold-down seats to accommodate other passengers when a wheelchair or mobility aid is not occupying the area provided the seats, when folded up, do not obstruct the clear floor space required. (See Fig. 2)

(3) *Mobility aids accommodated.* The securement system shall secure common wheelchairs and mobility aids and shall be either automatic or easily attached by a person familiar with the system and mobility aid and having average dexterity.

(4) *Orientation.* The securement shall be installed so that the secured wheelchair or mobility aid is facing toward the front of the vehicle.

(5) *Movement.* When the wheelchair or mobility aid is secured in accordance with manufacturer's instructions, the securement system shall limit the movement of an occupied wheelchair or mobility aid to no more than 2 inches in any direction.

(6) *Stowage.* When not being used for securement, the securement system shall not interfere with passenger movement, shall not present any hazardous condition, and shall be reasonably protected from vandalism.

§ 1192.135 Interior circulation, handrails and stanchions.

(a) Interior handrails and stanchions shall be designed and placed to permit ample turning and maneuvering space for wheelchairs and other mobility aids to reach a securement location from the lift or ramp.

(b) Handrails and stanchions shall be provided in the entrance to the vehicle in a configuration which allows persons with disabilities to grasp such assists from outside the vehicle while starting to board, and to continue using such assists throughout the boarding process. These assists shall have sufficient clearance from the driver's barrier to prevent inadvertent wedging of a passenger's arm. Where on-board fare collection devices are used, a horizontal passenger assist shall be located between boarding passengers and the fair collection device and shall prevent passengers from sustaining injuries on the fair collection device or windshield in the event of a sudden deceleration. Without restricting the vestibule space, the assist shall provide support for a boarding passenger from the door through the boarding procedure. Passengers shall be able to lean against the assist for security while paying fares.

(c) Handrails and stanchions shall be sufficient to permit safe on-board circulation, seating and standing assistance, and alighting by persons with disabilities.

(d) The diameter or width of the gripping surface of handrails and stanchions shall be 1¼ inches to 1½ inches or shall provide an equivalent gripping surface.

(e) The minimum height of the door opening at the lift and the interior height from lift to securement location shall be 56 inches.

§ 1192.137 Floors, steps and thresholds.

(a) All floors and steps shall have slip-resistant surfaces.

(b) All step edges and thresholds shall have a band of color(s) running the full width of the step or threshold which contrasts from the step tread and riser or adjacent floor material by 70%, as determined by the formula:

$$\text{Contrast} = [(B1-B2)/B1] \times 100\%$$

where:

B1 = light reflectance value (LRV) of brighter area, and

B2 = light reflectance value (LRV) of darker area.

(c) The height from the ground to the first step shall not exceed 14 inches. All stair risers shall not exceed [ ] inches and the tread depth shall not be less than [ ] inches. [See preamble Question 62 for options.]

§ 1192.139 Lighting.

(a) Any stepwell, or doorway in which a lift or ramp is installed or used, shall have, when the door is open, at least 2 foot-candles of illumination measured on the step tread, lift platform or ramp surface.

(b) The vehicle doorways shall have outside light(s) which provide at least 1 foot-candle of illumination on the street surface for a distance of 3 feet from all points on the bottom step tread, lift platform or ramp edge. Such light(s)

shall be located below window level and shielded to protect the eyes of entering and exiting passengers.

Subpart H—Over-the-Road Buses and Systems.

§ 1192.151 General.

New, used and remanufactured over-the-road buses, to be considered accessible by regulations issued by the Department of Transportation in 49 CFR part 37, shall comply with this subpart.

§ 1192.152 Doors, steps and thresholds.

(a) All floors and steps shall have slip-resistant surfaces.

(b) All step edges shall have a band of color(s) running the full width of the step which contrasts from the step tread and riser by 70%, as determined by the formula:

$$\text{Contrast} = [(B1 - B2)/B1] \times 100$$

where:

B1 = light reflectance value (LRV) of brighter area, and

B2 = light reflectance value (LRV) of darker area.

(c) The height from the ground to the first step shall not exceed [ ] inches. All stair risers shall not exceed [ ] inches and the tread depth shall not be less than [ ] inches. [See preamble Question 63 for options.]

(d) Doors shall have a minimum clear width when open of 32 inches. A door shall not require more than 15 lbf (66N) to prevent it from closing at any point in the closing cycle.

§ 1192.155 Interior circulation, handrails and stanchions.

(a) Handrails or stanchions shall be provided in the entrance to the vehicle in a configuration which allows persons with disabilities to grasp such assists from outside the vehicle while starting to board, and to continue using such assists throughout the boarding process. These assists shall have sufficient clearance from the driver's barrier to prevent inadvertent wedging of a passenger's arm.

(b) Where provided, handrails or stanchions shall be sufficient to permit safe on-board circulation, seating and standing assistance, and alighting by persons with disabilities.

(c) The diameter or width of the gripping surface of handrails and stanchions shall be 1¼ inches to 1½ inches or shall provide an equivalent gripping surface.

§ 1192.157 Lighting.

(a) Any stepwell or doorway immediately adjacent to the driver shall have when the door is open, at least 2 foot-candles of illumination measured on the step tread.

(b) The vehicle doorway shall have outside light(s) which provide at least 1 foot-candle of illumination on the street surface for a distance of 3 feet from all points on the bottom step tread edge. Such light(s) shall be located below window level and shielded to protect the eyes of entering and exiting passengers.

§ 1192.159 Mobility aid accessibility. [Reserved]

Subpart I—Other Vehicles and Systems

§ 1192.171 General.

(a) New, used and remanufactured vehicles and conveyances for systems not covered by other subparts of this part, to be considered accessible by regulations issued by the Department of Transportation in 49 CFR part 37, shall comply with this subpart.

(b) If portions of the vehicle or conveyance are modified in such a way that it affects or could affect accessibility, each such portion shall comply, to the extent practicable, with the applicable provisions of this subpart. This provision does not require that inaccessible vehicles be retrofitted with lifts, ramps or other boarding devices.

§ 1192.173 Automated guideway transit vehicles and systems.

(a) Automated Guideway Transit (AGT) vehicles and systems, sometimes called "people movers", shall comply with the provisions of §§ 1192.53 (a) through (c), and 1192.55 through 1192.61 for rapid rail vehicles and systems.

(b) Where the vehicle will operate in an accessible station, the design of vehicles shall be coordinated with the boarding platform design such that the horizontal gap between a vehicle door at rest and the platform shall be no greater than 1 inch and the height of the vehicle floor shall be plus or minus ½ inch of the platform height under all normal passenger load conditions. Vertical alignment may be accomplished by vehicle air suspension or other suitable means of meeting the requirement.

(c) In stations where open platforms are not protected by platform screens, a suitable device or system shall be provided to prevent individuals from stepping off the platform between cars. Acceptable devices include, but are not limited to, pantograph gates, chains, motion detectors or other appropriate devices.

§ 1192.175 High-speed rail cars and systems.

(a) All cars for high-speed rail systems, including but not limited to those using "maglev" or "TGV" technology, operating on exclusive, dedicated rail (i.e., not used by freight trains) or guideway, in which stations are constructed for revenue service after January 26, 1993, shall be designed for high-platform level boarding and shall comply with § 1192.111(a) for each type of car which is similar to intercity rail, §§ 1192.111(d), 1192.113 (a) through (c) and (e), 1192.115 (a) and (b), 1192.117 (a) and (b), 1192.121 through 1192.123, 1192.125(d), and 1192.127 (if applicable). The design of cars shall be coordinated with the boarding platform design such that the horizontal gap between a car door at rest and the platform shall be no greater than 3 inches and the height of the car floor shall be plus or minus ⅝ inch of the platform height under all normal passenger load conditions. Vertical alignment may be accomplished by car air suspension or other suitable means of meeting the requirement. All doorways shall have, when the door is open, at least 2 foot-candles of illumination measured on the door threshold.

(b) All other high-speed rail cars shall comply with the similar provisions of subpart F of this part.

§ 1192.177 Ferries, excursion boats and other vessels.

(a) *Doorways.* Doorways to all passenger areas shall have a minimum clear opening of 32 inches. Thresholds may be a maximum ¾ inch to accommodate gaskets and water seals provided they are beveled on both sides.

(b) *Seating areas.* At least one area for passengers using wheelchairs or mobility aids shall be provided as close as practicable to an accessible entrance, and adjacent to seating of other passengers, with a clear floor area 30 inches by 48 inches. Not more than 6 inches of the required clear floor space may be accommodated for footrests under another seat provided there is a minimum of 9 inches from the floor to the lowest part of the seat overhanging the space. Such areas may have fold-down seats to accommodate other passengers when a wheelchair or mobility aid is not occupying the area provided the seats, when folded up, do not obstruct the clear floor space required. (See Fig. 2.)

(c) *Securement.* [Reserved]

(d) *Gangplanks.* Gangplanks and other boarding devices shall comply with § 1192.125(c).

(e) *Restrooms.* If restrooms are provided for the general public they shall comply with § 1192.123(a) (1) through (5), and shall be connected to

the seating area(s) required by paragraph (b) of this section by an unobstructed route at least 32 inches wide.

(f) *Elevators.* [Reserved]

BILLING CODE 8150-01-M

Figures in Part 1192

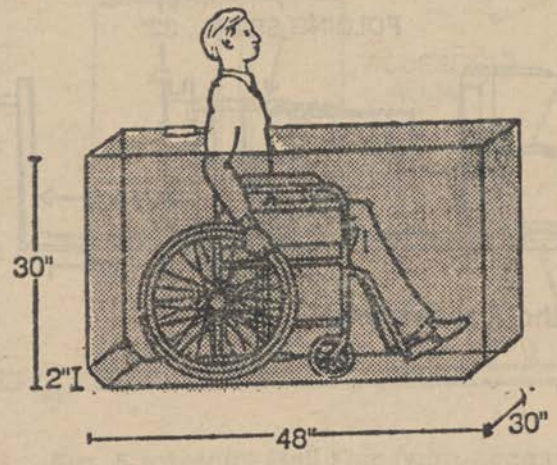

Fig. 1

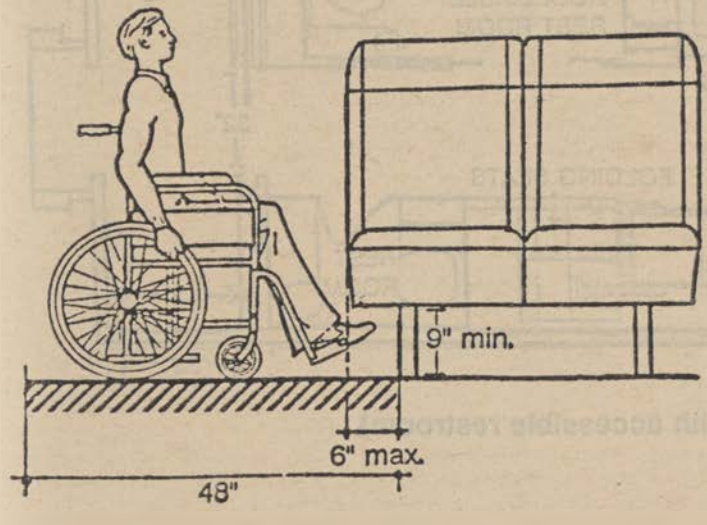

Fig. 2

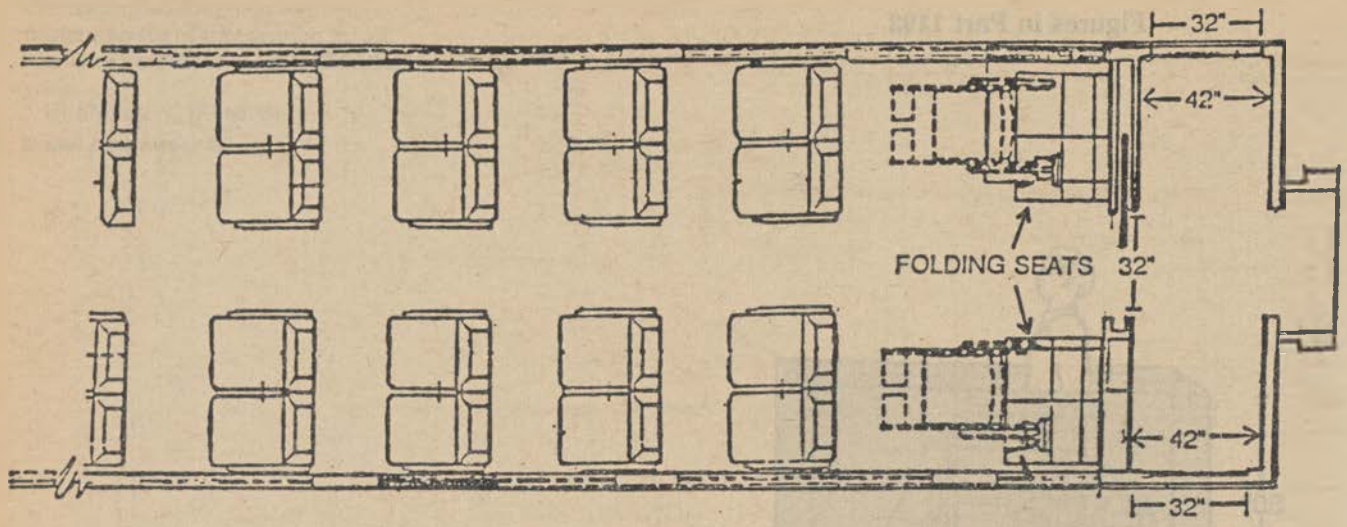

Fig. 3 Commuter Rail Car (without restrooms)

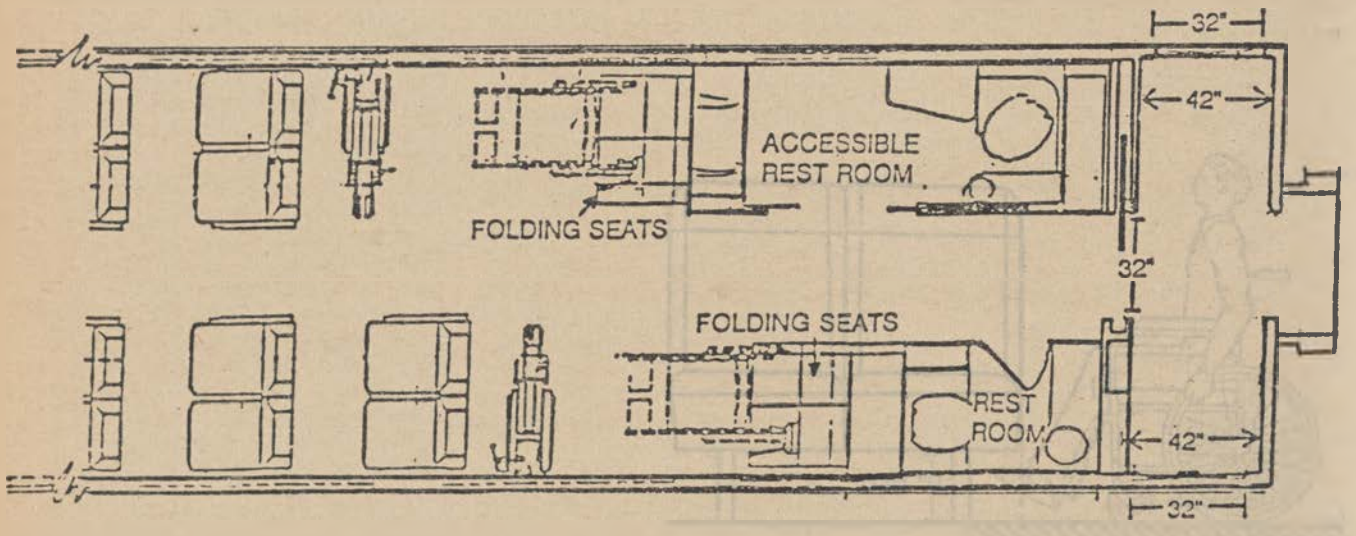

Fig. 4 Intercity Rail Car (with accessible restroom)

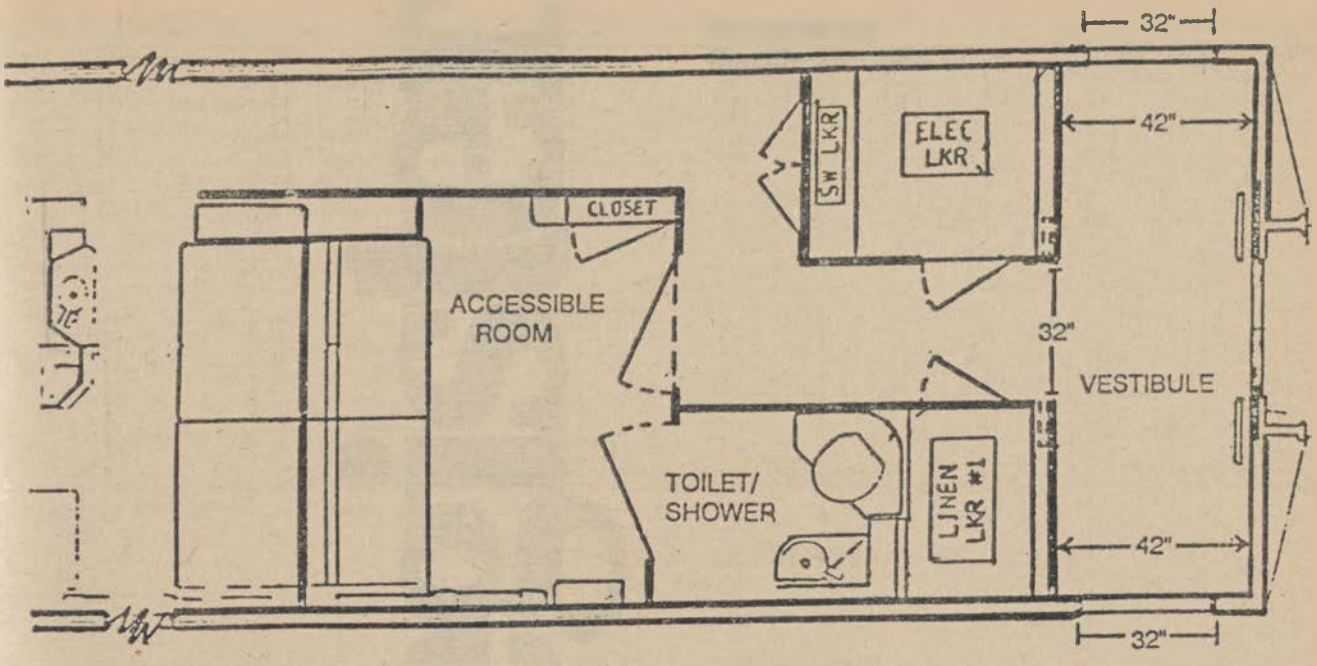

Fig. 5 Intercity Rail Car (with accessible sleeping compartment)

[FR Doc. 91-6347 Filed 3-19-91; 8:45 am]

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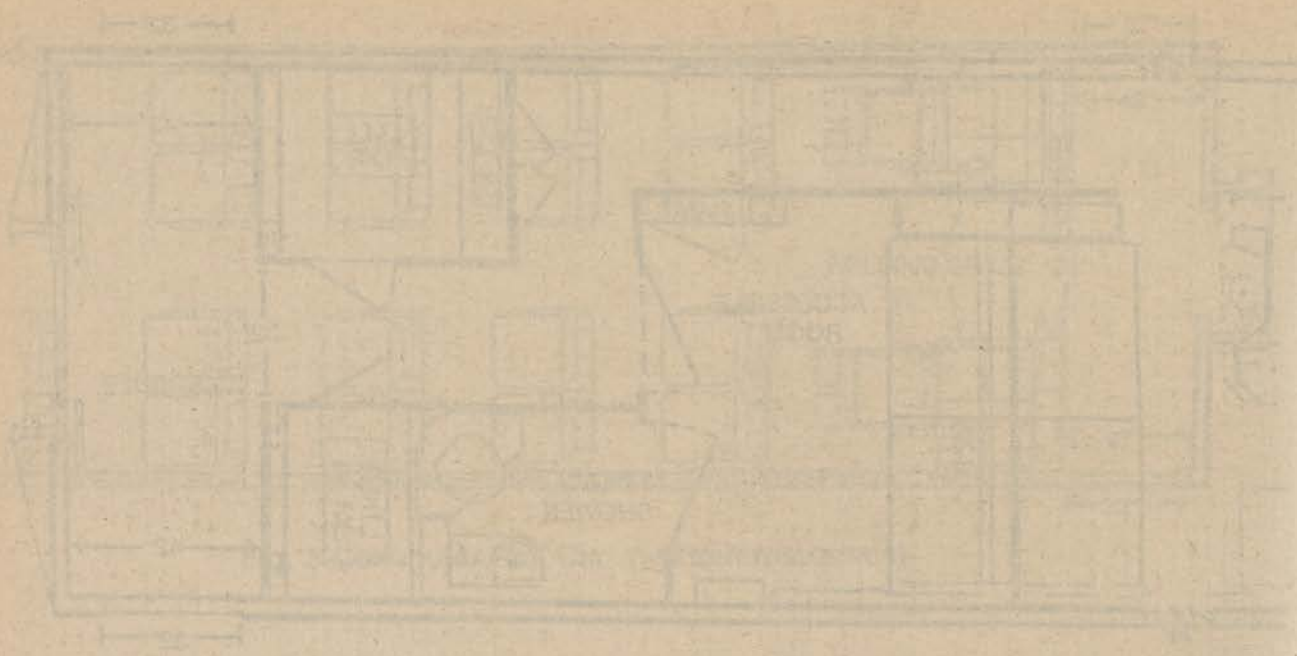

federal register

Wednesday
March 20, 199

Part III

Architectural and Transportation Barriers Compliance Board

36 CFR Part 1191

Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Supplemental Notice; Proposed Rules

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1191

[Docket No. 90-4]

RIN 3014-AA09

Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Supplemental Notice of proposes rulemaking.

SUMMARY: On January 22, 1991, the Architectural and Transportation Barriers Compliance Board published proposed guidelines to provide guidance to the Department of Justice on establishing accessibility standards for new construction and alterations in places of public accommodation and commercial facilities, as required by title III of the Americans with Disabilities Act (ADA) of 1990. The proposed guidelines reserved a section for additional requirements for transportation facilities. This supplemental notice of proposed rulemaking (SNPRM) proposes additional requirements for transportation facilities and will ensure that such facilities are readily accessible to and usable by individuals with disabilities in terms of architecture and design, transportation, and communication. The SNPRM also proposes to make the guidelines applicable to publicly operated transportation facilities covered by title II of the ADA in order to provide guidance to the Department of Transportation on establishing accessibility standards for those facilities.

DATES: Comments should be received by May 20, 1991. Comments received after this date will be considered to the extent practicable.

ADDRESSES: Comments should be sent to the Office of the General Counsel, Architectural and Transportation Barriers Compliance Board, 1111—18th Street, NW, Suite 501, Washington, DC 20036. Comments will be available for inspection at this address from 9 a.m. to 5:30 p.m. on regular business days.

FOR FURTHER INFORMATION CONTACT: James Raggio, Office of the General Counsel, Architectural and Transportation Barriers Compliance Board, 1111—18th Street, NW., Suite 501, Washington, DC 20036. Telephone (202) 653-7834 (Voice/TDD). This is not a toll-free number. This document is available in accessible formats (cassette tape, braille, large print, or computer disc) upon request.

SUPPLEMENTARY INFORMATION:

Background

On January 22, 1991, the Architectural and Transportation Barriers Compliance Board published a notice of proposed rulemaking (NPRM) in the **Federal Register** that set forth proposed guidelines to provide guidance to the Department of Justice on establishing accessibility standards for new construction and alterations in places of public accommodation and commercial facilities, as required by title III of the Americans with Disabilities Act (ADA) of 1990. See 56 FR 2296. The proposed guidelines contained scoping provisions and technical specifications generally applicable to all types of buildings and facilities covered by title III of the ADA (sections 4.1 through 4.34) and additional requirements specifically applicable to restaurants and cafeterias (section 5); medical care facilities (section 6); mercantile and business facilities (section 7); libraries (section 8); and transient lodging (section 9).

Title III of the ADA specifically covers privately operated terminals, depots, or other stations used for public transportation. The scoping provisions and technical specifications contained in section 4.1 through 4.34 of the proposed guidelines are applicable to those transportation facilities. Because transportation facilities have unique characteristics, some of which involve coordination with transportation vehicles, the Board reserved a section of the proposed guidelines for additional requirements that would specifically apply to transportation facilities pending the development of accessibility guidelines for transportation vehicles. The Board has published a separate NPRM elsewhere in today's **Federal Register** containing proposed accessibility guidelines for transportation vehicles and is publishing this supplemental notice of proposed rulemaking (SNPRM) to amend the accessibility guidelines for building and facilities to include additional requirements specifically applicable to transportation facilities. The proposed additional requirements will ensure that transportation facilities are readily accessible to and usable by individuals with disabilities in terms of architecture and design, transportation, and communication.

Title III of the ADA becomes effective on January 26, 1992. See 42 U.S.C. 12181 note. The requirements of title III relating to new construction apply to places of public accommodation and commercial facilities designed or constructed for first occupancy after January 26, 1993. See 42 U.S.C. 12183(a)(1). The Department of Justice published proposed regulations to implement title III in the **Federal Register** on February 22, 1991 (56 FR 4452) which further address these dates. See 28 CFR 36.401 and 36.402.

The Board also proposes to make its accessibility guidelines for buildings and facilities applicable to publicly operated transportation facilities covered by title II of the ADA. Title II establishes accessibility requirements for both new and existing transportation facilities operated by units of State and local government and the National Railroad Passenger Corporation (Amtrak). Title III of the ADA also becomes effective on January 26, 1992. See 42 U.S.C. 12131 note, 12141 note, and 12161 note. In the case of rapid rail, light rail, and commuter rail title III requires with repect to existing facilities that "key stations" (as determined under criteria established by the Department of Transportation) be made accessible by July 26, 1993. See 42 U.S.C. 12147(b) and 12162(e)(2)(A). The Department of Transportation may extend this period for stations that need extaordinarily expensive structural changes to, or replacement of, existing facilities up to 20 years for commuter rail and 30 years for rapid rail and light rail provided certain conditions are met. Id. Title III also establishes "program accessibility" requirements with respect to all other existing stations on rapid rail and light rail systems for persons with disabilities other than wheelchair users. See 42 U.S.C. 12147. The Department of Transportation will address which station features must be made accessible under this provision. In the case of intercity rail, all existing stations must be made accessible by July 26, 2010. See 42 U.S.C. 12162(e)(2)(A). In addition title III establishes accessibility requirements for alterations to existing facilities. See 42 U.S.C. 12147(a) and 12162(e)(2)(B). The Department of Transportation is responsible for issuing regulations that include accessibility standards for these publicly operated transportation facilities. The Department of Transportation's standards must be consistent with the Board's guidelines.

Section-by-Section Analysis

10. Transportation Facilities

10.1 General

This section is a scoping provision which applies all the other provisions for buildings and facilities published in the **Federal Register** on January 22, 1991 (56 FR 2296) to transportation facilities, in addition to the applicable requirements of this section.

Title III of the ADA does not require elevators in newly constructed or altered places of public accommodation and commercial facilities that are less than three stories or have less than 3000 square feet per story, unless the facility is a type specified in the statute or designated by the Department of Justice. See 42 U.S.C. 12183(b). This exemption is contained in section 4.1.3(5) of the guidelines. However, there is no elevator exemption in title II of the ADA for publicly operated transportation facilities. In addition, the Department of Justice has proposed to designate privately operated terminals, depots, or other stations used for public transportation, or an airport passenger terminal, as not eligible for the elevator exemption under title III of the ADA. See 56 FR 7452 (February 22, 1991) (28 CFR 36.401)(d)). Therefore, section 4.1.3(5) of the guidelines does not apply to transportation facilities covered by title II of the ADA and will not apply to privately operated transportation facilities covered by title III of the ADA under the Department of Justice's proposed regulations.

Question 1: [1] The guidelines have been separated according to transportation mode (e.g., bus stops and terminals, fixed facilities and stations, airports, and boat and ferry docks). The Board requests comments on whether this division is appropriate or whether a different one should be used. The Board also seeks comments on whether the terms "station" and "terminal" should be defined.

10.2 Bus Stops and Terminals

10.2.1 New Construction

Question 2: Paragraph (1) covers the construction of a new bus loading "passenger pad" at a stop or the construction of a boarding and alighting area in a bus terminal. It does not address the siting of a bus stop on an existing public way which is addressed in section 10.2.2(1). The provision specifies a minimum clear level area outside the bus door where a lift would be deployed (72 inches length and 42 inches width). The space must be clear of utility poles, fire hydrants, street furniture and other similar obstacles. The location of the clear space would be different for front or rear door lifts. A typical lift extends 3 or 4 feet beyond the doorway. The minimum space required at the forward edge of the lift for a wheelchair or mobility aid to exit is 3 feet, as determined by preliminary results of a Board sponsored project on accessible parking and loading zones. The 6 feet (72 inches) length required by this provision is barely adequate if the bus stops slightly back from the curb or roadway edge to allow more room to exit. The width requirement allows 12 inches of leeway to allow some positioning of the bus. The Board requests comments on whether these minimum dimensions are too restrictive; whether more room should be required; and how much.

Question 3: The Board is also considering adding a provision that the area be "level" in some sense. Unfortunately, specifying a strict requirement would preclude the construction of pads in hilly areas. For example, the general requirement for accessible loading zones is that the surface be level with a slope no greater than 1:50 in all directions. Meeting a 1:50 slope may be possible toward or away from the roadway because such a slope is typically provided for drainage, but a pad built on a street which exceeded this slope could not meet the requirement without being at an angle with respect to the lift platform. That is, the slope of the roadway determines the slope of the pad. One possible way to address this problem would be to set a maximum slope perpendicular to the roadway for drainage, and require the slope parallel to the roadway to be the same as the roadway. Some current stops on existing, steep roadways might be inaccessible. The Board requests comments on how to provide the maximum acceptable slope without precluding the construction of pads in hilly areas.

Paragraph (1) also requires the passenger pad or boarding and alighting area to be connected to the public way by an accessible route. If a passenger pad is constructed in an unimproved area, there must be some way provided to exit the area, possibly a curb ramp or an accessible transition to a sidewalk. The provision does not necessarily mean that the public way itself will be accessible. For example, if a concrete passenger pad is constructed in a rural area which has no sidewalks but only a dirt or gravel road shouldn't the pad must have a ramp or accessible transition to the shoulder but there is no requirement to construct sidewalks. If sidewalks are constructed in the future, however, they must provide an accessible transition to the passenger pad.

Paragraph (2) concerns bus shelters on public streets. Bus shelters are often provided by a private company which sells advertising in or on the shelter. They are normally governed by city or local ordinance and usually involve some approval by the transportation entity. This provision requires that bus shelters be sited at the bus stop so as to permit a wheelchair or mobility aid user to enter and use it. The shelter must be placed sufficiently back from the curb to allow an accessible route into it, at least 36 inches wide. The space under or inside the shelter must also be configured in such a way that it provides a clear area to accommodate at least one wheelchair or mobility aid user. The loading area required by paragraph (1) must also be accessible from the shelter.

Paragraph (3) would require, where route identification is normally provided for the general public, at least one sign that identifies the route or routes serving the stop or bay, to meet the character height and spacing requirements of section 4.30 (signage). This information could be on the bus stop sign itself, provided it met the character height requirements for signs mounted above 66 inches. Permanent signage for use of the system must also meet the same requirements. This provision is not intended to limit the provision of detailed timetables or route maps, such as on display units which are often attached to sign poles. As long as such pole-mounted signs do not extend beyond the pole by more than 4 inches, they would meet the "protruding objects" requirements of section 4.4. Because of length, detailed timetables or route maps could not be provided if the characters were required to be no less than ⅝ inches high. Since this information changes frequently, it is not intended to be considered "permanent" as used in this provision.

Question 4: The Board seeks comments on how route and schedule or timetable information could be made accessible to persons with vision impairments.

Question 5: Paragraph (3) does not impose the requirements for illumination contained in section 4.30 since signage is

[1] Throughout the preamble, the Board asks questions or seeks information on specific issues. To assist interested parties in responding to the questions and to facilitate analysis of responses to the questions, each question is numbered and commenters are encouraged to clearly identify or refer to the question number in their comments. Where applicable, commenters are also encouraged to provide empirical data or existing analyses that may shed light on costs related to the provisions.

usually outdoors where lighting is not controllable. The Board requests comments on whether a separate requirement for illumination should be included for signage within terminals.

10.2.2 Bus Stop Positioning

Paragraph (1) requires the transportation entity to ensure that the required clear space is available at stops on existing streets, to the maximum extent feasible. Primarily, this means that stops must be chosen which most closely meet the requirements of section 10.2.1.

In a typical urban area, specific bus routes are chosen according to some set of criteria. After the streets are known, and the intersections or other areas for desirable stops have been selected, agency personnel are sent to survey likely bus stop locations. The staff measures the area to ensure sufficient space for the length of the bus expected to be operated, checks for storm drains which might interfere with the bus' front wheel, and generally selects the most desirable spot for passengers to board. The selected spot is marked, and a sign is placed. Paragraph (1) may require a slight adjustment in the position of the stop that would have been chosen in the absence of a lift, or the removal of street furniture. The entity must pay particular attention to the area where the lift is to be deployed, which will be different for front and rear door lifts. At least one large transit agency delayed putting into service over 900 rear-door lift buses for a year and a half because it had not planned in advance the interface of lifts and existing stops and necessary changes to those stops.

Question 6: Paragraph (2) would require that new route identification signs to comply with the appropriate character height and spacing requirements of section 4.30 (signage). The Board requests comments on the effect of this provision and whether it is adequate to address the needs of persons with visual impairments to use the bus system.

10.3 Fixed Facilities and Stations

10.3.1 New Construction

This section is based on existing Department of Transportation (DOT) regulations in 49 CFR 609.13 for federally funded fixed-guideway stations. Intercity bus terminals have been added.

Question 7: Paragraph (1) requires designers to lay out stations in a straightforward manner, both to reduce the distance a person with a disability would need to travel and to encourage consistency in design to assist all persons, but especially persons with cognitive, visual, or stamina-limiting disabilities to locate various elements expeditiously. The requirement is a performance criterion which seeks to encourage good efficient design but it lacks objective criteria which could be applied to judge whether a specific design was in compliance with the provision. The Board requests information on what other general or specific design guidance could be provided in this paragraph.

Paragraph (2) provides that the circulation path for a person with a disability shall coincide, to the maximum extent feasible, with the circulation path for other passengers. This is partly a matter of convenience and partly a safety and security issue. Planners should avoid placing elevators and other accessible entrances away from the areas where other passengers would be available to provide assistance if necessary. This requirement is tempered with the phrase "to the maximum extent feasible" in recognition that absolute adherence is not always possible, especially in deep subway stations where an elevator's vertical path must necessarily be removed from one end of an escalator's path. Sections 4.1.2(1) and 4.1.3(1) of the proposed guidelines published in the **Federal Register** on January 22, 1991 (56 FR 2296) provide that an accessible route complying with section 4.3 connect an accessible entrance with public transportation stops, accessible parking spaces, and public streets within the site and that an accessible route also connect accessible elements and spaces within the building or facility. In the January 22, 1991 **Federal Register**, the Board has requested comments on whether the requirements proposed here in paragraph (2) should be included as part of the general requirement for an accessible route in section 4.3. See 56 FR 2309. If such a provision is included in section 4.3, this paragraph will be revised accordingly.

Question 8: The Board seeks comment on whether the provision that the circulation path for persons with disabilities coincide with the path for other passengers in transportation facilities should be retained in section 10.3.1(3) even if it is not included in section 4.3.

Paragraph (2) also requires signage to indicate the location of the accessible entrance, and an accessible route to it, if it is different from the circulation path for the general public. A similar provision has been proposed in section 4.1.2(7)(c) of the proposed guidelines to require inaccessible entrances to have signage indicating the route to the nearest accessible entrance. See 56 FR 2332. This paragraph also requires that the accessible route not bypass fare collection.

Paragraph (3) proposes to set some criteria for deciding whether more than one entrance to a fixed-guideway station should be accessible. Especially for subway stations, which frequently have entrances which are blocks apart on the surface, having only one entrance accessible can pose a severe hardship for some persons with disabilities, particularly those with reduced stamina. Some subway stations, which are technically a single facility, have platforms, mezzanines and other portions which are not internally connected by any direct route. A person with a disability who can only use one entrance may need to travel a very long and circuitous route internally to reach a boarding platform which the general public can directly reach from an inaccessible entrance. Moreover, such a route may require the use of several elevators, any one of which if out of service renders the path inaccessible. The options suggested attempt to address this problem. The cost of each option could be drastically different due primarily to additional elevators required. In general, option 3 is the most costly and option 4 is the least. For further discussion of the cost considerations, see the Preliminary Regulatory Impact Analysis (PRIA).

Option 1 is actually a restatement of the existing, though misunderstood, requirement of section 4.1.2(8) of the Uniform Federal Accessibility Standards (UFAS). This section requires that, where entrances serve different functions, including transportation facilities, an entrance serving each such function must be accessible. Some transit agencies have interpreted this provision to mean that an entrance serving each type of facility must be accessible and have provided access to one set of bus bays, for example, but not another set serving different routes. In one particular instance, a person with a disability can access one set of routes at the accessible entrance, but to get a bus serving the inaccessible entrance must travel several blocks to a highway which crosses the tracks, go over a steep overpass, and return several blocks to the other set of bays which are only a few feet away from the starting point. Section 4.1.2(1) of the proposed guidelines would clarify the requirement by specifically stating that public transportation stops must be connected by an accessible route to an accessible entrance. See 56 FR 2331. Of course, a transit agency could choose to route all

bus lines serving a particular station to a single accessible entrance.

Option 2 attempts to establish a distance criterion between entrances for requiring more than one entrance to be accessible. The difficulty in this approach is establishing the specific distance which would be appropriate. For example, there is no such thing as a "standard block" from one city to the next, or even within a city. One way to avoid the problem of block variability would be to set a specific distance. Some accessibility standards set a limit of 200 feet for the maximum distance between certain elements, such as the distance between accessible parking spaces and an accessible entrance. Assuming that a person with a disability should not be required to travel more than 200 feet in either of two opposite directions to reach an accessible entrance would require the entrances to be no more than 400 feet apart.

Option 3 would require all entrances to be accessible. Neither UFAS nor section 4.1 of these guidelines include retail and commercial facilities among facilities which must be served by an accessible entrance to a building, but Option 3 would serve this purpose.

Option 4 proposes that, notwithstanding section 4.1 of these guidelines, only one entrance would be required to be accessible. This option recognizes the special difficulty of providing accessible entrances to subway stations, for example, which often must move and relocate utility lines and sewers to provide a vertical elevator shaft. Some of this extra cost could be avoided by the use of inclined elevators along existing stair or escalator paths. Inclined elevators currently cost two to three times more than standard elevators but this differential could decrease if inclined elevators became more common.

Question 9: The Board requests comments on each of the proposed options, including benefits and costs. In particular, the Board seeks information on: (a) whether the 400 foot distance in option 2, or some other distance, is reasonable and whether there is data to support any specific distance criterion; and (b) the benefits and costs to retailers, transit providers, and persons with disabilities if option 3 were adopted. The Board also seeks information on the cost of inclined elevators.

Question 10: Paragraph (4) addresses direct connections between other buildings and facilities and transportation facilities which are increasingly common, especially in new systems. Direct connections offer a distinct advantage to both the transportation entity and the connecting building, especially in cold climates, and may even generate revenue for both owners. In several stations in some relatively new subway systems, the general public can move directly from transit stations to office buildings or shopping malls while persons with disabilities must travel to the surface and sometimes travel a block or more on the surface to reach the same point. This provision requires designers to plan the location of "knock-out panels" for potential connections so that they are on accessible routes. The Board requests comments on whether this provision is adequate to ensure that persons with disabilities have access to connecting facilities with the same ease and independence as the general public.

Question 11: Paragraph (5) clarifies that station identification signs are to be treated as "permanent identification of . . . spaces" and each entrance to a station must have at least one sign which can be read by touch, mounted at a consistent height. For example, if a pylon is used at a station entrance, such as Washington DC's Metro, Atlanta's MARTA, and Baltimore's MTA, the tactile signage could be incorporated in the signage for all passengers. Where stations serve different routes or destinations, that information would also need to be tactile. This provision would not necessarily be applicable to some intercity bus terminals. The Board requests comments on whether a standard location for such tactile signage should be prescribed.

Paragraph (6) addresses the need for passengers in a train to be able to identify the station quickly and easily from inside the vehicle. This is especially important for persons with mobility impairments who may need extra time to get ready to deboard. This is also important for those who cannot hear (or understand) any public address announcement which may be provided. Since passengers with disabilities cannot always ensure that they will be on the side of the train where they can see platform-mounted signs (in a typical rail transit system, the "platform side" of the train varies from stop to stop), this provision requires signs to be mounted where they can be seen from inside the vehicle through the windows on both sides of the vehicle.

Paragraph (7) ensures that signage necessary for use of the system, including routes served by a particular station, are accessible to persons with low vision. It also requires signs on the platform or in the boarding area identifying the station be available in tactile format.

Question 12: The Board seeks comments on how information regarding routes and destinations can be made available to individuals who are blind.

Paragraph (8) requires automatic fare collection and adjustment systems to be accessible to and usable by persons with disabilities according to the specifications for automated teller machines. In addition, at least one fare collection device or system must be accessible. Such devices are available on the market. Every station in Atlanta's MARTA system has one. Accessible turnstiles are also available. The accessible device or system need not be of the same type or design as the system for other passengers as long as it is as easily, conveniently and independently as usable as the system used by the general public. For example, one rapid transit system has installed a modified bus fare box adjacent to the station attendant's kiosk next to an accessible gate. Such a system may suffice, provided it meets the specifications for controls and operating mechanisms and is usable even when the station attendant is absent. To the maximum extent feasible, however, the accessible fare collection system should be integrated into the system used by the general public. Fare collection systems which require assistance from a station attendant do not afford equal access, especially when the station attendant is absent or busy. Paragraph (8) also requires that gates which must be pushed open by a wheelchair or mobility aid be designed with a smooth continuous surface so as not to catch on parts of wheelchairs or mobility aids.

Paragraph (9) requires the edge of platforms bordering a drop-off to have a detectable warning complying with section 4.29 (detectable warnings) running the entire length of the drop-off. The detectable warning need be only ⅓ the width of the platform under some circumstances. For example, there are some existing rapid transit platforms which are only 36 inches wide. In such a case, the detectable warning could cover the entire platform and there would be no detectable "safe" area. Under this provision, a 36 inch platform would have a 12 inch warning surface. If it were a center platform, with a drop-off on both sides, it would have a 12 inch unmarked area down the center with a 12 inch warning on each side. The reference to "platform screens" in this provision recognizes that some automated guideway transit systems, sometimes called "people movers", provide a barrier at the platform edge with doors which open only when a vehicle is lined up on the other side. Such systems

operate like elevators and, since there is no drop-off, do not require detectable warnings.

Question 13: The requirement for detectable warnings would also be applicable to the bus bay area where passengers board intercity buses. The typical intercity bus terminal bay has a "standard" curb as opposed to the normal rail platform edge. The Board seeks comments on whether bus bay areas with a "standard" curb should be required to have a detectable warning or should such warnings only be applied adjacent to a "substantial" drop-off? If the latter provision is adopted, how should a "substantial" drop-off be defined? One proposal being considered for inclusion in a private sector standard is to apply detectable warnings only at drop-offs which exceed a "nominal" curb. Should such a criterion be applied here?

Question 14: Research sponsored by the Board and others has demonstrated that changes in resiliency or sound-on-cane-contact to be the most universally detectable under a broad range of circumstances. See 56 FR 2311–12 for a discussion of the research. Paragraph (9) would require interior platform detectable warnings to incorporate such a difference. The restriction to interior applications recognizes the problems with such materials when subjected to outdoor weather changes. The Board requests data on exterior applications of detectable warnings, particularly with respect to resilience.

Paragraph (10) is derived from existing DOT regulations in 49 CFR 609.13 for federally funded fixed-guideway systems which requires that platforms be coordinated with the vehicle floor to minimize the vertical and horizontal gap. This paragraph adds quantitative specifications for the gap allowed. Section 321(a) of the Surface Transportation Assistance Act of 1978 required DOT to prepare a cost and benefit analysis of making existing rail systems accessible. Part of that study involved an investigation of existing barriers, including the gap between rapid rail cars and platforms. For example, according to reports prepared for the so-called "321 Study", the horizontal gap in rapid rail systems varies from 2½ inches to 3 inches. Three inches seems to be an obtainable maximum, which allows for the sway of relatively high speed vehicles and is common in new systems. Light rail vehicles should have no trouble achieving the same standard. The 3 inch gap has apparently caused little trouble in the hundreds of thousands of crossings each year by persons using mobility aids in the Washington DC Metro. For lighter weight, slower moving automated guideway systems, a survey conducted in 1980 for the development of accessibility design guidelines for such systems found the maximum gap to be 1 inch or less. See *Los Angeles People Mover: Handbook on Accessibility for the Elderly and Handicapped,* UMTA (1980). The report is available for inspection at the Board's office. Copies may be obtained from the National Technical Information Service (NTIS) in Springfield, Virginia.

Question 15: The fact that some older rapid systems operate with smaller horizontal gaps demonstrate that closer tolerances can be achieved. From an accessibility standpoint, smaller gaps are desirable. Construction tolerances may make it difficult to easily achieve the smaller gaps when building platforms. However, some automated guideway systems have mounted wooden planks to the outer edge of the platform to reduce the gap. A hard rubber extrusion could serve a similar function in rapid rail without causing damage to the vehicles in case they rubbed it passing the station. A vehicle manufacturer suggested some years ago that a hose could be mounted to the edge of a platform which would be pumped with air when the train stopped, filling the gap. When the train prepared to leave the station, the air stream would be directed by a solenoid-controlled valve at right angles to the hose opening, aspirating the air and collapsing the hose. Reportedly, a light rail system operating in Spain provides a gap closing device at one door of one car. The device must be activated by the passenger prior to boarding but the controls may not be usable by persons with disabilities. It is not the intent of these guidelines to require such devices, but the Board seeks information on any devices or construction techniques which could reduce the horizontal gap in new construction and existing stations in the most cost-effective manner possible. The Board also seeks data on accidents associated with the gap between platforms and vehicles.

Question 16: With respect to the vertical gap, modern rapid and light rail vehicles and people movers usually have air suspension systems capable of being set for consistent heights. The Board understands that the Bay Area Rapid Transit District specifies a height of plus or minus ½ inch. The Washington DC Metro included a requirement for a height of plus or minus ⅝ inch in a recent specification but accepted vehicles considerably out of compliance. According to an informal survey conducted by Board staff, rapid rail car manufacturers claim to be able to set a specific car floor height within plus or minus ¼ inch and that maintaining that height is a matter of "routine maintenance". The Board seeks information verifying manufacturer's claims. In particular, the Board requests comments on how the specifications would be maintained over time, especially as wheels wear.

Where the specified tolerances cannot be achieved, an exception is provided for systems with vehicles having lifts or bridge plates complying with the proposed guidelines for vehicles published elsewhere in today's **Federal Register**. In effect, the tolerances define an "accessible interface" which is negotiable independently. If the coordination is achieved, the transit entity need do nothing else to provide accessibility to the vehicles. If the tolerances cannot be met, some other suitable means must be provided to permit access to the vehicles.

Paragraph (11) requires boarding areas of new stations to be provided in an integrated setting rather than segregated. Systems designed for "double stopping" in which the vehicle stops in one location to board the general public, then moves to another location to board persons with disabilities, do not provide equal access. Not only does such a program promote separation, it introduces operational problems in the system which may lead to service degradation and a "backlash" against providing quality service to persons with disabilities. Double stopping, where it occurs, is usually the result of adding lifts or mini-high platforms as an afterthought rather than planning the system to be accessible. This provision seeks to promote adequate planning in new construction.

Paragraph (12) concerns illumination. Good general illumination on accessible routes and in accessible spaces is critical to the use of transportation systems by persons with disabilities, especially persons with low vision. Many forms of visual impairment cause a person's vision to respond slowly to changes in lighting level, especially in moving from bright daylight to dim transit stations. Relatively uniform lighting levels, as well as brightness are important. Fluorescent ceiling lights with proper diffuser panels provide even illumination and are longer lasting and cheaper to operate than incandescent lights. Other types of illumination, such as Halogen, "daylight" spectrum, and some systems tested by the military, are also more appropriate for persons with visual impairments. On the other hand, recessed ceiling lights mounted in cans,

or downlights, are example of inappropriate lighting. They create pools of light and shadow which are disconcerting to many persons with low vision. Conditions such as glaucoma and cataracts cause particular susceptibility to glare and reflection which is aggravated as a person moves under succeeding downlights. Such lights also reflect off the interior surfaces of eyeglasses which may be particularly disconcerting to persons with vision impairments. Downlights are not prohibited by this paragraph but cannot be the only source of illumination on an accessible route or space.

Question 17: The Board requests comments on whether the guidelines should specify illumination levels for other than signage, including variance and uniformity, for use of transportation facilities by persons with disabilities.

Paragraph (13), as was discussed under paragraph (3), takes into account that different entrances to the same transportation station may be physically separated from one another so that there is no accessible route connecting the entrances internally. This is especially true if there are a limited number of elevators connecting levels. For this reason, unlike the typical office or assembly area, a public telecommunication display device or telecommunication device for deaf persons (TDD) is needed at each entrance. One rapid transit system which has all of its stations staffed, provides a portable TDD in several station attendant kiosks which can be obtained upon request. Public TDDs which can be installed as a part of a public telephone are also commercially available.

It is recommended that telephones be provided on the boarding platform if provided on the mezzanine. It is sometimes necessary to place calls from inside transit stations, especially if there has been a delay which affects a pick-up time at the destination, such as a paratransit connection. For persons with mobility impairments who may need to use elevators, getting to the mezzanine to make a necessary call and returning to the platform to board a train may be a difficult and time consuming task in the typical transit station. Getting to a phone quickly and easily may mean the difference between making or not making a connection. For paratransit systems which often require scheduling hours in advance, the ability to make a call may be especially critical. However, because the provision of a telephone in the platform is only incidental to accessibility and usability of the system, the Board is not considering making it a requirement of these guidelines.

Question 18: Paragraph (14) simply requires that the minimum space necessary for wheel flanges be provided in areas such as pedestrian malls or where the opposite boarding platform can only be reached by crossing tracks. Devices designed to close the flange gap are available, and have been used for years in freight yards, but the reliability of their continual use in daily operation is not known. The Board seeks information on the minimum width of the space needed for wheel-flange clearance as well as any feasible gap-closing devices which could be specified, and any potential costs involved.

Question 19: Paragraph (15) concerns public address systems. Most transportation facilities provide a variety of information to passengers by public address systems, some of it, such as elevator operation, specifically related to service for persons with disabilities. Persons with hearing impairments need this information as well. The proposed provision is a general performance requirement which could include assistive listening devices, video monitor paging systems used at the Baltimore Washington International Airport, light emitting diode (LED) or "flip dot" visual displays used in the Bay Area Rapid Transit District and some stations in New York, or other means. Such systems are beneficial to the general public as well, especially in noisy environments. Although the provision is stated in terms of a performance criterion, the Board requests comments on whether more specific design guidance is needed for alternative systems which could meet the criterion (e.g., color of LED display, height of letters on visual paging systems).

Paragraph (16) addresses clocks. Transportation systems usually have time-related service or fare changes. In some cases, particularly with respect to "reduced fare" programs for persons with disabilities, knowing the correct time may be critical. This regulatory provision would require clocks, when provided, to be visible to persons with low vision as well as others.

Paragraph (17) addresses escalators. While escalators are not permitted as part of an accessible route, and cannot be safely used by some persons with disabilities, they are a common means of providing entrance and exit to stations. In many new subway systems, they are the only means of exit when elevators fail. This proposal does not envision the provision of wheelchair accessible escalators which are reportedly in service in the Japan National Railway system. The requirements in this section are designed to allow escalators to be available in situations when the elevators are out of service and there is a need to evacuate the station, but only with assistance by system personnel. As a general rule, the Board does not endorse the use of escalators by persons with mobility impairments. However, escalators should not impose unnecessary barriers for emergency use if needed. The operational aspects of emergency evacuation are the purview of the DOT regulations.

Question 20: The requirement for a 32 inch clear width is to permit a person using a wheelchair or mobility aid to be assisted up the escalator. The requirement for at least two treads to be level beyond the comb plate before risers begin to form, is to provide sufficient space to position a wheelchair before steps begin to form. More than two level treads is desirable. Many new escalators are already installed with this feature including all of the escalators in the Washington, DC Metro system. Such a design is also generally safer since it provides time for riders to establish sound footing before steps form. This is especially important for elderly persons and those who walk with some difficulty. The Board seeks information on any incremental costs and benefits associated with wide versus narrow escalators, especially with respect to passenger carrying capacity at the same speed.

Question 21: The requirements for a step-edge contrasting band is designed to assist persons with low vision who do not need the elevator and is consistent with the proposed guidelines in section 4.30 regarding signage for persons with low vision. See 56 FR 2376–77. The Board requests comments on whether the 70% contrast ratio specified in section 4.30 is an appropriate application in this context.

Question 22: Paragraph (18) concerns elevators and is derived from earlier DOT regulations implementing Section 504 of the Rehabilitation Act of 1973. A reference to section 4.10 of these guidelines has been added. The exception is designed to clarify requirements of section 4.10 which appear to prohibit an elevator designed to accommodate a stretcher. At least one subway system currently under design plans to install elevators which are 60 inches wide by 84 inches long, to accommodate a stretcher if necessary during emergency evacuation. Such a cab would provide a 60 inch diameter

turning circle but has a dimension less than the minima prescribed in section 4.10. The Board requests comments on whether this exception should be incorporated in section 4.10, rather than having it only apply to transportation facilities.

Paragraph (19) requires the ticketing area, where provided, to be usable by persons with disabilities to the maximum extent feasible. Primarily, this section is intended to apply to intercity and commuter rail service. The space in front of ticket counters must provide sufficient maneuvering space for wheelchairs and other mobility aids and must be reachable by an accessible route. Counters must comply with the requirements applicable generally to mercantile facilities. See 56 FR 2382–83.

Question 23: Paragraph (20) requires the baggage claim area, if provided, to be on an accessible route and the equipment to be approachable. It does not impose specific requirements on the equipment itself. This provision is primarily applicable to intercity rail. The requirements for gates to have a solid surface is so that they will not catch on parts of the wheelchair or mobility aids as the gate is pushed open. The Board requests comments on whether other design specifications are needed for baggage claim areas.

10.3.2 Existing Facilities: Key Stations

As discussed above, the ADA requires key stations on rapid rail, light rail, and commuter rail systems to be made accessible and all existing intercity rail stations to be made accessible. This section addresses these provisions of the ADA and is modeled on the proposed DOT regulations for making existing airport facilities accessible. See 55 FR 8081 (March 6, 1990).

Question 24: The Board requests comments on whether the accessible entrance should be required to be no more than some specified distance from a primary entrance used by the general public. See section 10.3.1(3) for further discussion of this issue. For example, the entrance which can be most easily or cheaply modified may be one which is infrequently used by the general public. For security and safety reasons, persons with disabilities should not have to use out-of-the-way places to gain access. This means that the place which is most convenient for the transit system operator is not necessarily the best place from the standpoint of persons with disabilities. However, a requirement to locate the accessible entrance close to a primary entrance may have significant cost implications. If a specific distance is specified, what should the figure be?

Specific requirements for alterations are contained in 4.1.6 of the proposed guidelines. See 56 FR 2335–37.

Paragraph (2) specifies that at least one accessible route include many of the features which would be required to be accessible in new construction. Some provisions for new construction have been omitted from this paragraph. For example, section 10.3.1(3) deals with multiple accessible entrances which are not anticipated for key stations. Section 10.3.1(4), which deals with direct connections, is not included because a provision has been included in paragraph (4) to cover only newly constructed direct connections. Section 10.3.1(10) specifies coordination of platform and vehicle floor height which may not be possible in some existing stations. Section 10.3.1(11) generally prohibits "double stopping" in new construction but may be required in some existing stations. Section 10.3.1(17) specifies requirements for escalators but the design required may not be adaptable to existing facilities.

Question 25: The Board requests comments on whether there are any suitable means for narrowing the horizontal gap at platforms in existing stations which could be included in these guidelines, particularly where the platform is curved and cannot attain a uniform horizontal gap. Although escalators are not part of an accessible route as discussed under section 10.3.1(17), in many stations escalators are the only means of exit when elevators fail. The Board requests comments on whether the requirements for escalators in section 10.3.1(17) should be included here and the costs and feasibility of such a requirement.

Paragraph (3) simply requires that the accessible route not by-pass the fare collection system.

Question 26: Paragraph (4) requires new direct connections opened in existing stations, even if they are into existing buildings or facilities, meet the requirements of new facilities, insofar as the portion in the station is concerned. If it is economically advantageous to the transit entity or the building owner to create a new entrance into an inaccessible portion of the station, the parties will need to decide whether the advantage warrants making additional changes in the station and negotiate how the costs are to be shared. In general, the transit entity could simply pass the extra cost on to the building or facility wanting the connection to decide if it were worth the cost. This provision does not require the expenditure of any additional funds but only that, if the modification or addition is undertaken, that it be done in conformance with accessibility requirements. The transit entity or building owner can always choose not to perform the modification. The Board requests comments on any special circumstances, difficulties or costs related to providing accessible new direct connections in existing transit facilities.

10.3.3 Existing Facilities: Alterations

[Reserved]

This section pertains to alterations of an area containing a "primary function" and requires certain modifications to the "path of travel" and other elements, provided the cost is not "disproportionate" to the overall cost. The responsibility for defining a primary function and other aspects of this requirement fall to the Department of Justice. Therefore, the Board is reserving this section pending rulemaking activities by the Department of Justice and will include conforming requirements in the final guidelines. See 56 FR 7452 (February 22, 1991) for the Department of Justice's proposed regulations.

10.4 Airports

10.4.1 New Construction

Most of the provisions of this section are derived from proposed DOT regulations for airports. See 55 FR 8081 (March 6, 1990).

Paragraphs (1) and (2) are similar to the requirements for transit stations regarding designing the layout and circulation paths to minimize the distances which persons with disabilities must travel compared to the general public. Paragraph (3) requires the ticketing area to be usable by persons with disabilities to the maximum extent feasible. Paragraph (4) concerns public telephones. Most airports provide many public telephones and will be required to provide TDDs in accordance with section 4.1.3(17)(c). See 56 FR 2335. This provision deals with small airports which may not have phones in sufficient number to trigger those requirements. TDDs in airports are critical for deaf persons who may need to contact persons when planes are delayed. Paragraph (5) requires the baggage claim area to be on an accessible route and the equipment to be approachable. Paragraph (6) concerns public address systems and is a general performance requirement. The Board has a technical paper, "Airport TDD Access: Two Case Studies", which describes the visual paging system used in the Baltimore Washington, International Airport.

Question 27: Paragraph (7) is reserved for airport security systems. The Board

seeks information on specific requirements for airport security systems. In particular, what aspects of the security are part of the facility and appropriately addressed in these guidelines, and which are more correctly regarded as equipment subject to operational requirements in the DOT regulations? Since most airport security is performed by air carrier personnel, regulated under the Air Carrier Access Act not the ADA, additional information is requested on which facilities are covered.

10.4.2 Existing Airports

Paragraph (1) is derived from proposed DOT regulations for airports. See 55 FR 8081 (March 6, 1990). A provision has been added for at least one accessible restroom.

10.5 Boat and Ferry Dockets
[Reserved]

Question 28: Ferry and boat docks and other similar facilities must be accessible. There are unique problems with docks, however, primarily due to variations in tide level. The horizontal and vertical gap between boats and boarding areas cannot be maintained with the same degree of compliance as for fixed facilities, especially under rough water conditions. Even floating docks will not remain in a constant relationship with the vessel. The requirements for docks may need to specify a range of options for compliance. There are some examples of "accessible" facilities in Seattle and Delaware but the Board needs more information to set specific requirements. The Board is particularly interested in examples of accessible facilities and how they are operated. For example, what slope of a gangplank can be reasonably assured under varying tide conditions? If elevators are used on a dock to reach different pier levels for boarding at different tide levels, how can they be protected from salt water corrosion? Since gangplanks may be wet, should a higher value of slip resistance be required than for ramps and if so, what should it be?

Regulatory Process Matters

These guidelines supplement the proposed ADA accessibility guidelines for buildings and facilities published in the **Federal Register** on January 22, 1991 (56 FR 2296) and contain additional provisions for publicly and privately operated transportation facilities that are required to be accessible by titles II and III of the ADA. The guidelines provide guidance to the Department of Justice and Department of Transportation which are responsible for establishing the accessibility standards for covered transportation facilities. The standards established by those agencies must be consistent with these guidelines. These guidelines, when considered together with the regulations to be issued by the Department of Justice and Department of Transportation, meet the criteria for a major rule under Executive Order 12291.

The Board completed a Preliminary Regulatory Impact Analysis (PRIA) in connection with the proposed ADA accessibility guidelines for buildings and facilities and has prepared an addenum to the PRIA for this supplemental notice of proposed rulemaking. The PRIA and the addendum have been placed in the docket and are available for public inspection at the Board's office.

The majority of transportation facilities are designed and constructed by public entities which are currently covered by Section 504 of the Rehabilitation Act of 1973. That statute prohibits discrimination on the basis of disability by recipients of federal financial assistance and implementing regulations generally require that covered entities comply with the Uniform Federal Accessibility Standards (UFAS) when constructing or altering buildings and facilities. In addition, most transportation facilities are covered by State accessibility codes and standards. Therefore, the addendum to the PRIA addresses those proposed accessibility elements which are in addition to existing requirements or practice and which are different or marginally more costly. Included in the analysis were: accessible fare gates; accessible boarding (mini-high platforms, portable lifts); public information system (visual paging system, moving light emitting diode (LED) display); direct connections (elevators); detectable warnings at boarding platforms; and telecommunication display devices or telecommunication devices for the deaf (TDDs). Costs were also analyzed for accessibility elements under section 4 of the proposed guidelines published in the **Federal Register** on January 22, 1991 which had the potential of adding to the cost of transportation facilities.

The direct costs of the accessibility elements for fixed transportation facilities and stations are estimated as follows:

Element	Guideline paragraph	New construction
Areas of Refuge	4.3.11	$1,248
Curb Ramp Detectable Warnings	4.7.7	24
Elevators—Braille hoistway markings	4.10	102
Alarms—visual alarms	4.28.3	1,568
Detectable Warnings—stairs	4.29	960
Signage—Braille	4.30	87
Direct Connections (elevator)	10.3.1(4)	50,000
Accessible Fare Gates	10.3.1(8)	6,000–8,000
Detectable Warnings	10.3.1(9)	1,200–3,600
TDDs	10.3.1(13)	424
Public Information System	10.3.1(15)	18,400

Level boarding is assumed in all rapid rail and some light rail stations, for which there is no additional cost for an accessible interface with the vehicle. Commuter and intercity rail systems are assumed to use mini-high platforms or portable lifts, as is current practice. The direct costs for a mini-high platform based on a modular kit developed by New Jersey Transit is $70,000 per platform or $140,000 per station based on two platforms needed per station. The direct costs for a portable lift, including storage facility, based on the model used by Amtrak is $3,000.

The direct costs of the accessibility elements for airports are estimated as follows:

Element	Guideline paragraph	New construction
Areas of Refuge	4.3.11	$7,488
Curb Ramp Detectable Warnings	4.7.7	24
Elevators—Braille hoistway markings	4.10	207
Alarms—visual alarms	4.28.3	19,604–20,280
Detectable Warnings—vehicular path	4.29.5	12,474
Signage—Braille	4.30	734
TDDs	10.4.1(4)	848
Public Information System	10.4.1(6)	11,200

Based on the above, the direct costs by type of transportation facility for the accessibility elements are estimated as follows:

Facility type	Cost	Cost/square feet	Percent of new construction cost
Fixed Transportation Facilities—			
Underground	$80,013–84,413	3.16–3.24	0.18–0.19
At-grade	80,013–84,413	2.21–2.33	0.88–0.93
Elevated	80,013–84,413	2.19–2.31	0.55–0.58
Additional cost for stations without level boarding	3,000–140,000		
Airports	52,579–53,255	.04	0.03

Question 29: The Board seeks comments on the approaches and data used to estimate the potential costs of the guidelines for transportation facilities. The Board is interested in any empirical data or existing analysis which may shed light on these matters and particularly is interested in information on the cost of additional elevators, if any, needed to ensure that direct connections are accessible. The Board is also interested in information on: (1) the number of visual alarms needed for subway stations and (2) the costs of various configurations of a moving light emitting diode (LED) display, visual paging, or other similar systems for making public information systems accessible to individuals with hearing impairments. Any such information, where relevant, will be incorporated into the Final Regulatory Impact Analysis.

The additional guidelines contained in this supplemental notice of proposed rulemaking will not have a significant impact on a substantial number of small entities. A Federalism assessment will be prepared by the Department of Transportation. The Board will cooperate with that agency in the preparation of the assessment. Finally, the guidelines do not have any significant impact on the environment.

List of Subjects in 36 CFR Part 1191

Buildings, Civil rights, Handicapped, Individuals with disabilities.

Authorized by vote of the Board on December 13, 1990, and January 2, 1991.

William H. McCabe,

Chairman, Architectural and Transportation Barriers Compliance Board.

For the reasons set forth in the preamble, the proposed guidelines published in the **Federal Register** on January 22, 1991 (56 FR 2296) adding part 1191 to title 36 of the Code of Federal Regulations are proposed to be amended as follows:

PART 1191—AMERICANS WITH DISABILITIES ACT (ADA) ACCESSIBILITY GUIDELINES FOR BUILDINGS AND FACILITIES

1. The authority citation for 36 CFR part 1191 continues to read as follows:

Authority: Americans with Disabilities Act of 1990, Pub. L. 101–336, 42 U.S.C. 12204.

2. Section 1191.1 is revised to read as follows:

§ 1191.1 Accessibility guidelines.

The accessibility guidelines for buildings and facilities for purposes of the Americans with Disabilities Act are found the appendix to this part. The guidelines are issued to provide guidance to the Department of Justice and Department of Transportation on establishing accessibility standards to implement the legislation.

3. The appendix to part 1191 is amended by revising section 1, and adding a new section 10 to read as follows:

Appendix to Part 1191—Americans With Disabilities Act (ADA) Guidelines for Buildings and Facilities

* * * * *

1. Purpose

This document sets guidelines for accessibility to buildings and facilities by individuals with disabilities under the Americans with Disabilities Act (ADA) of 1990. These guidelines are to be applied during the design, construction, and alteration of places of public accommodation and commercial facilities covered by title III of the ADA and publicly operated transportation facilities covered by title II of the ADA to the extent required by regulations implementing those titles.

* * * * *

10. Transportation Facilities

10.1 General

Every station, bus stop, bus stop pad, terminal, building or other fixed transportation facility, shall comply with the applicable provisions of 4.1 through 4.34, and the applicable provisions of this section.

Exception: The elevator exception in 4.1.3(5) does not apply to transportation facilities covered by title II of the ADA.

10.2 Bus Stops and Terminals

10.2.1 New Construction

(1) Bus stops, bays and other areas were a lift or ramp is to be deployed shall have a pad with a firm, stable surface; a minimum clear length of 72 inches, measured from the curb or vehicle roadway edge; and a minimum clear width 42 inches, measured parallel to the vehicle roadway; and shall be connected to the public way by an accessible route complying with 4.3 and 4.4.

(2) Where provided, bus shelters shall be installed or positioned so as to permit a wheelchair or mobility aid user to enter from the public way and to reach a location, having a minimum clear floor area of 30 inches by 48 inches, entirely within the perimeter of the shelter. Such shelter shall be connected by an accessible route to the boarding area required by paragraph (1) of this section.

(3) Where provided, at least one route identification sign and permanent information for the use of the transportation system shall comply with 4.30.2, 4.30.3, and 4.30.5.

10.2.2 Bus Stop Positioning

(1) Bus stop sites shall be chosen such that, to the maximum extent feasible, the area where lifts or ramps are to be deployed comply with section 10.2.1.

(2) If new route identification signs are provided, at least one shall comply with 4.30.2, 4.30.3, and 4.30.5.

10.3 Fixed Facilities and Stations

10.3.1 New Construction

New rapid rail, light rail, commuter rail, intercity bus, intercity rail, and automated guideway transit stations shall comply with the following provisions, as applicable:

(1) Elements such as ramps, elevators or other vertical circulation devices, fare vending or ticketing areas, and fare collection areas shall be placed to minimize the distance which wheelchair users and other persons who cannot negotiate steps may have to travel compared to the general public.

(2) The circulation path, including an accessible entrance and an accessible route, for persons with disabilities shall, to the maximum extent feasible, coincide with the circulation path for the general public. Where the circulation path is different, signage shall be provided to show the accessible

entrance and accessible route. Fare collection systems shall be on an accessible route.

(3) **Option 1:** Entrances to a station serving different transportation fixed routes or groups of fixed-routes shall also be accessible.

Option 2: Each entrance to a station which is more than 400 feet from an accessible entrance shall also be accessible.

Option 3: All entrances to stations shall be accessible.

Option 4: In lieu of compliance with 4.1, at least one entrance to each station shall be accessible.

(4) When direct connections to commercial, retail, or residential facilities are provided, the transportation entity shall provide an accessible entrance complying with 4.14 to each such direct connection and an accessible route complying with 4.3 to and from boarding platforms and each such direct connection, including all transportation system elements used by the public.

(5) Each entrance to a station shall have at least one sign identifying the station and the route or routes served, if applicable, complying with 4.30.4 and 4.30.6.

(6) Rapid rail, light rail, commuter rail, intercity rail and automated guideway transit stations shall have identification signs, complying with 4.30.2, 4.30.3, 4.30.5, and 4.30.8, at frequent intervals and clearly visible from within the vehicle on both sides. Station identification signs placed close to vehicle windows (i.e., on the side opposite from boarding) shall have the top of the highest letter or symbol below the top of the vehicle window and the bottom of the lowest letter or symbol above the horizontal mid-line of the vehicle window.

(7) Lists of stations, routes, or destinations served by the station and located on boarding areas and platforms or mezzanines shall comply with 4.30.2, 4.30.3, 4.30.5, and 4.30.8. Signs on platforms or boarding areas identifying the specific station shall comply with 4.30.4.

(8) Automatic fare vending, collection and adjustment (e.g., add-fare) systems shall permit utilization of the transportation system by persons with disabilities; shall comply with 4.34; and shall have control identification signage complying with 4.30.4. If self-service fare collection devices are provided for the general public, at least one such device for entering, and at least one such device for exiting, unless one device serves both functions, at each accessible entrance shall have a minimum clear opening of 32 inches wide; shall permit passage of a wheelchair; and shall have coin or card slots, and controls necessary for its operation complying with 4.27. Gates which must be pushed open by wheelchair or mobility aid users shall have a smooth continuous surface extending from 2 inches above the floor to 27 inches above the floor.

(9) Boarding area and platform edges bordering a drop-off, not protected by platform screens, shall have a detectable warning, complying with 4.29, at least 36 inches wide, or ⅓ the width of the platform, whichever is less, running the full length of the platform drop-off. In interior stations, the detectable warning shall differ in resiliency or sound-on-cane-contact from the adjacent platform material.

(10) For rapid rail, light rail, commuter rail, intercity rail and automated guideway transit systems, the rail-to-platform height shall be coordinated with the vehicle floor height so that the vertical difference, measured when the vehicle is at rest, is within plus or minus ⅝ inch under all normal passenger load conditions. For rapid rail, light rail, commuter rail and intercity rail systems, the horizontal gap, measured when the vehicle is at rest, shall be no greater than 3 inches. For automated guideway transit systems, the horizontal gap shall be no greater than 1 inch.

Exception: In light rail systems operating on streets or pedestrian malls, and in commuter rail and intercity rail systems where it is not operationally or structurally feasible to meet the horizontal gap or vertical difference requirements, mini-high platforms, car-borne or platform-mounted lifts, ramps or bridge plates, or similar manually deployed devices, meeting the applicable requirements of 34 CFR 1192.83, 1192.95 or 1192.125 (proposed elsewhere in this issue of the **Federal Register**) shall suffice.

(11) Stations shall not be designed or constructed so as to require persons with disabilities to board and alight a vehicle at a location other than the one used by the general public.

(12) Illumination levels in the areas where signage is located shall comply with 4.30.8. Lighting along accessible routes in accessible spaces shall be of a type and configuration to provide uniform illumination.

(13) Where public telephones are provided, in addition to the requirements of 4.31, a public telecommunications display device or telecommunications device for the deaf (TDD) shall be provided at each entrance. Where mezzanines and boarding platforms are on different levels, it is recommended that at least one accessible public telephone be provided on each.

(14) Where crossing tracks is necessary to reach boarding platforms, the route surface shall be level and flush with the rail top at the outer edge and shall have only the minimum feasible gap on the inner edge of each rail to permit passage of wheel flanges. Where this is not feasible, an above-grade or below-grade accessible route shall be provided.

(15) Where public address systems are provided to convey information to persons in terminals, stations, or fixed facilities, a means of conveying the same or equivalent information to persons who are deaf or hearing impaired shall be provided.

(16) Where clocks are provided they shall comply with 4.30.1, 4.30.2, 4.30.3, 4.30.5, and 4.30.8.

(17) Where provided in subways, escalators shall have a minimum clear width of 32 inches. At the top and bottom of each escalator run, at least two contiguous treads shall be level beyond the comb plate, before risers begin to form. Each tread shall have a visually contrasting band defining the edge of the tread. The edge of the tread shall be apparent from both ascending and descending directions.

(18) Where provided, elevators shall be glazed or have transparent panels to allow an unobstructed view both in to and out of the car. Elevators shall comply with 4.10.

Exception: Elevator cars with a clear floor area in which a 60 inch diameter circle can be inscribed may be substituted for the minimum car dimensions of 4.10, Fig. 22.

(19) Where provided, ticketing areas shall permit persons with disabilities to obtain a ticket and check baggage. Space in front of counters shall comply with 4.2 and 4.3 and counters shall comply with 7.2.

(20) Where provided, baggage check-in and retrieval systems shall be on an accessible route complying with 4.3, and shall have space immediately adjacent complying with 4.2. If unattended security barriers are provided, at least one gate shall comply with 4.13. Gates which must be pushed open by wheelchair or mobility aid users shall have a smooth continuous surface extending from 2 inches above the floor to 27 inches above the floor.

10.3.2 Existing Facilities: Key Stations

(1) Rapid, light and commuter rail key stations, as defined under criteria established by the Department of Transportation in 49 CFR part 37, and intercity rail stations shall provide at

least one accessible route from an accessible entrance to those areas necessary for use of the transportation system.

(2) The accessible route required by 10.3.2(1) shall include the features specified in 10.3.1 (1)–(2), (5)–(9), (12)–(16), and (18)–(20).

(3) Where technical infeasibility in existing stations requires the accessible route to lead from the public way to a paid area of the transit system, an accessible fare collection system, complying with 10.3.1(8), shall be provided along such accessible route.

(4) New direct connections to commercial or retail facilities shall comply with 10.3.1(4).

10.3.3 Existing Facilities: Alternations. [Reserved]

10.4. Airports

10.4.1 New Construction

(1) Elements such as ramps, elevators or other vertical circulation devices, ticketing areas, security checkpoints, or passenger waiting areas shall be placed to minimize the distance which wheelchair users and other persons who cannot negotiate steps may have to travel compared to the general public.

(2) The circulation path, including an accessible entrance and an accessible route, for persons with disabilities shall, to the maximum extent feasible, coincide with the circulation path for the general public. Where the circulation path is different, signage shall be provided to show the accessible entrance and accessible route.

(3) Ticketing areas shall permit persons with disabilities to obtain a ticket and check baggage. Space in front of counters shall comply with 4.2 and 4.3 and counters shall comply with 7.2.

(4) Where public telephones are provided, TDDs shall be provided in compliance with 4.1.3(17)(c) or one per concourse, whichever is greater.

(5) Baggage check-in and retrieval systems shall be on an accessible route complying with 4.3, and shall have space immediately adjacent complying with 4.2. If unattended security barriers are provided, at least one gate shall comply with 4.13. Gates which must be pushed open by wheelchair or mobility aid users shall have a smooth continuous surface extending from 2 inches above the floor to 27 inches above the floor.

(6) Terminal information systems which broadcast information to the general public through a public address system shall provide a means to provide the same or equivalent information to persons who are deaf or hearing impaired. Such methods may include, but are not limited to, an assistive listening device complying with 4.33 and visual paging systems using video monitors and computer technology.

(7) Security Systems. [Reserved]

10.4.2 Existing Airports

(1) When required by regulations issued by the Department of Transportation, existing airports shall provide at least one accessible route from an accessible entrance to those areas in which each carrier conducts activities related to the provision of air transportation.

(2) The accessible route required by 10.4.2(1) shall include the features specified in 10.4.1 and at least one accessible restroom for each sex, or one unisex restroom, complying with 4.22 and 4.23.

10.5 Boat and Ferry Docks. [Reserved]

* * * * *

[FR Doc. 91–6348 Filed 3–19–91; 8:45 am]

BILLING CODE 8150–01–M

federal register

Wednesday
March 20, 1991

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

Real Estate Settlement Procedures Act, Section 6 Model Disclosure Statement and Applicant's Acknowledgement of Servicing Transfer; Sample Language for Transfer Notification; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-91-3191; FR-2942-N-01]

Real Estate Settlement Procedures Act, Section 6 Model Disclosure Statement and Applicant's Acknowledgement of Servicing Transfer; Sample Language for Transfer Notification

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner.

ACTION: Notice

SUMMARY: This Notice sets forth the Model Disclosure Statement and Applicant's Acknowledgment (hereafter generally called Disclosure Statement) required by the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101-625, approved November 28, 1990) (the Act) regarding the potential transfer of mortgage servicing for any federally-related mortgage loan. "Federally-related mortgage loan" is defined in section 3(1) of the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. 2601 *et seq.*) and the definition is refined in the implementing regulation for RESPA (Regulation X) (24 CFR 3500) at § 3500.5(b). Certain exceptions from coverage are set forth in § 3500.5(d). This Disclosure Statement must be given to every applicant for a federally-related mortgage loan, which includes nearly every one- to four family residential mortgage loan in the United States.

EFFECTIVE DATE: March 20, 1991.

FOR FURTHER INFORMATION CONTACT: Grant E. Mitchell or John B. Shumway, Office of General Counsel, (202) 708-1550, room 10248, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Paperwork Requirements

The information collection requirements contained in this Notice have been approved for a period of 60 days by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3054(h)), and assigned OMB control number 2502-0458. The public reporting burden for each of these collections of information is estimated to include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information Information on the estimated public reporting burden is provided under the Preamble heading, Other Matters. Send comments regarding this burden estimate or any other aspect of this collection information, including suggestions for reducing this burden, within 30 days from the date of this Notice to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Description	Disclosure to Applicant	Notice of assignments	Total
Number of respondents	20,000 [1]	20,000 [1]	20,000
Average # per respondent	200	3,000	
Total annual responses	4,000,000	60,000,000	64,000,000
Hours per response	2 minutes (0.033 hr)	6 minutes (0.10 hr)	
Total hours	132,000	6,000,000	6,132,000
Annual cost	$2 million [2]	$90 million [3]	$92,000,000

[1] These are the same 20,000 respondents.
[2] Includes labor at the rate of $10 per hour, plus miscellaneous costs.
[3] Includes $0.50 per Notice for postage and miscellaneous costs.

Section 941 of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101-625, approved November 28, 1990) (the Act) amended the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. 2601 *et seq.*) by adding a new section 6, which requires disclosure to applicants of historical data regarding the transfer of mortgage servicing (that is, the right to collect mortgage payments for principal, interest and escrow account items). The amendment also requires that potential borrowers be given information concerning the likelihood that their mortgage servicing might be transferred. Section 6 sets forth additional notice requirements and other rights for borrowers and provides for the collection of damages and costs by borrowers from servicers for noncompliance.

HUD is complying with the requirements of sections 6(a)(2) and 6(a)(3) to promulgate a Model Disclosure Statement and Applicant's Acknowledgement. HUD has also provided sample language that HUD believes will assist mortgage servicers in complying with the other notice requirements set out in the new section 6. The sample language may be used by the present servicer and new servicer separately, or in a single notice, so long as the timing provisions of section 6 are met. While HUD anticipates that the use of this sample language will help assure buyers and sellers of mortgage servicing that the notice requirements of section 6 have been followed, the use of this language is not mandatory.

All of the provisions of Section 6 appear on their face to be effective immediately upon enactment of the Act. Sections 6(a)(2) and 6(a)(3), however, give the Secretary 90 days from the date of enactment to develop a Model Disclosure Statement and Applicant's Acknowledgement. HUD concludes, therefore, that development of this Model Disclosure Statement and Applicant's Acknowledgement is a *sine qua non* for lender compliance. Section 6(a) is therefore effective upon publication of this Notice.

Certain clarifications by the Congressional Conferees regarding mortgage servicing (136 Cong. Rec. S17138, October 26, 1990) and in the Joint Explanatory Statement of the Committee of Conference for the Act indicate a Congressional intent that sections 6(b), 6(c), 6(d) and 6(e) of the Act were to become effective 60 days from the date of enactment, and not immediately upon enactment. HUD is persuaded that Congress intended a 60-day delay to allow servicers to phase in the procedures set out in sections 6(b), 6(c), 6(d) and 6(e). However, this reference to a 60-day delay in the legislative history does not fully protect servicers from lawsuits for actions during the first 60 days after enactment of the Act, and HUD has no authority under section 941 to administratively implement this 60-day delay. However, HUD believes that a technical amendment to the Act may be enacted by Congress to eliminate lender exposure during the first 60 days after enactment, and possibly until

rulemaking on section 941 is completed. Further rulemaking dealing with provisions of the new section 6, including the preemption of state law provisions, has been initiated and will follow this Notice.

Set forth below is the Disclosure Statement and sample language pursuant to section 6 of RESPA. The Disclosure Statement is to be delivered to the applicant at the time of application, and the Applicant's Acknowledgement portion is to be signed by the applicant, and co-applicant, if any. If no face to face interview is held at the time of application, the Disclosure Statement is to be delivered to the applicant upon receipt of the application. An executed Disclosure Statement is a required part of any application package. If an application is received by a mortgage broker, that broker is responsible for assuring that the Disclosure Statement is provided to the applicant by any lender with whom the loan is placed. If co-applicants indicate the same address on their application, one copy delivered to the address shown is sufficient. If different addresses are shown on the application or if the Disclosure Statement is to be executed in counterparts, a copy must be delivered to each of the applicants. Delivery is effectuated by placing the document in the mail, with prepaid first-class postage. There is currently no limit on the record retention period for copies of the executed Disclosure Statements, although HUD anticipates that Congress may later enact a statute of limitations provision for actions under this Section.

BILLING CODE 4210-27-M

DISCLOSURE STATEMENT
[Use Lender's business stationery or similar heading]

NOTICE TO MORTGAGE LOAN APPLICANTS: THE RIGHT TO COLLECT YOUR MORTGAGE LOAN PAYMENTS MAY BE TRANSFERRED. FEDERAL LAW GIVES YOU CERTAIN RIGHTS. READ THIS STATEMENT AND SIGN IT ONLY IF YOU UNDERSTAND ITS CONTENTS.

Because you are applying for a mortgage loan covered by the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. §2601 et seq.) you have certain rights under that Federal law. This statement tells you about those rights. It also tells you what the chances are that the servicing for this loan may be transferred to a different loan servicer. "Servicing" refers to collecting your principal, interest and escrow account payments. If your loan servicer changes, there are certain procedures that must be followed. This statement generally explains those procedures.

Transfer practices and requirements

If the servicing of your loan is assigned, sold, or transferred to a new servicer, you must be given written notice of that transfer. The present loan servicer must send you notice in writing of the assignment, sale or transfer of the servicing not less than 15 days before the date of the transfer. The new loan servicer must also send you notice within 15 days after the date of the transfer. Also, a notice of prospective transfer may be provided to you at settlement (when title to your new property is transferred to you) to satisfy these requirements. The law allows a delay in the time (not more than 30 days after a transfer) for servicers to notify you under certain limited circumstances, when your servicer is changed abruptly. This exception applies only if your servicer is fired for cause, is in bankruptcy proceedings, or is involved in a conservatorship or receivership initiated by a Federal agency.

Notices must contain certain information. They must contain the effective date of the transfer of the servicing of your loan to the new servicer, the name, address, and toll-free or collect call telephone number of the new servicer, and toll-free or collect call telephone numbers of a person or department for both your present servicer and your new servicer to answer your questions about the transfer of servicing. During the 60-day period following the effective date of the transfer of the loan servicing, a loan payment received by your old servicer before

its due date may not be treated by the new loan servicer as late, and a late fee may not be imposed on you.

Complaint Resolution

Section 6 of RESPA (12 U.S.C. §2605) gives you certain consumer rights, whether or not your loan servicing is transferred. If you send a "qualified written request" to your loan servicer concerning the servicing of your loan, your servicer must provide you with a written acknowledgment within 20 business days of receipt of your request. A "qualified written request" is a written correspondence, other than notice on a payment coupon or other payment medium supplied by the servicer, which includes your name and account number, and your reasons for the request. Not later than 60 business days after receiving your request, your servicer must make any appropriate corrections to your account, and must provide you with a written clarification regarding any dispute. During this 60-day period, your servicer may not provide information to a consumer reporting agency concerning any overdue payment related to such period or qualified written request.

Damages and Costs

Section 6 of RESPA also provides for damages and costs for individuals or classes of individuals in circumstances where servicers are shown to have violated the requirements of that Section.

Servicing Transfer Estimates by Original Lender

The following is the best estimate of what will happen to the servicing of your mortgage loan:

1. _____ We do not service mortgage loans. We intend to assign, sell, or transfer the servicing of your loan to another party. You will be notified at settlement regarding the servicer.

OR

2. _____ We are able to service this loan and presently intend to do so. However, that may change in the future. For all the loans that we make in the 12-month period after your loan is funded, we estimate that the chances that we will transfer the servicing of those loans is between:

_____ 0 to 25%

_____ 26 to 50%

_____ 51 to 75%

_____ 76 to 100%

This is only our best estimate and it is not binding. Business conditions or other circumstances may affect our future transferring decisions.

3. This is our record of transferring the servicing of the loans we have made in the past:

Year	Percentage of Loans Transferred (Rounded to nearest quartile-0%, 25%, 50%, 75% or 100%)
19__	_____ %
19__	_____ %
19__	_____ %

The estimates in 2. and 3. above do not include transfers to affiliates or subsidiaries. If the servicing of your loan is transferred to an affiliate or subsidiary in the future, you will be notified in accordance with RESPA.

_____

LENDER [Signature Not Mandatory]

_____

DATE

INSTRUCTIONS TO PREPARER: For applications received in calendar year 1991 after the effective date of this Notice, the information in 2. above will be for calendar year 1990 only; for applications received in 1992, this information will be for calendar years 1990 and 1991; and for applications received in 1993 and thereafter, this information will be for the previous three calendar years.

ACKNOWLEDGEMENT OF MORTGAGE LOAN APPLICANT

I/we have read this disclosure form, and understand its contents, as evidenced by my/our signature(s) below.

_____

APPLICANT'S SIGNATURE

_____

CO-APPLICANT'S SIGNATURE

_____

DATE

[SAMPLE LANGUAGE]

NOTICE OF ASSIGNMENT, SALE OR TRANSFER
OF SERVICING RIGHTS

You are hereby notified* that the servicing of your mortgage loan, that is, the right to collect payments from you, is being assigned, sold or transferred from _____ to _____, effective _____.

The assignment, sale or transfer of the servicing of the mortgage loan does not affect any term or condition of the mortgage instruments, other than terms directly related to the servicing of your loan.

Except in limited circumstances, the law requires that your present servicer send you this notice at least 15 days before this effective date or at closing. Your new servicer must also send you this notice no later that 15 days after this effective date or at closing. [In this case, the present servicer and the new servicer have combined all necessary information in this one notice].

Your present servicer is _____. If you have any questions relating to the transfer of servicing from your present servicer call _____ [enter the name of an individual or department here] between _____ a.m. and _____ p.m. on the following days _____ _____. This is a toll-free [or collect call] number.

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* This notification is a requirement of Section 6 of the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. §2605).

INSTRUCTIONS TO PREPARER: Delivery means placing the notice in the mail, first class postage prepaid, prior to 15 days before the effective date of transfer (transferor) or prior to 15 days after the effective date of transfer (transferee). However, this notice may be sent not more than 30 days after the effective date of the transfer of servicing rights if assignment, sale or transfer of the servicing of the mortgage loan is preceded by termination of the contract for servicing the loan for cause, commencement of proceedings for bankruptcy of the servicer, or commencement of proceedings by the Federal Deposit Insurance Corporation (FDIC) or the Resolution Trust Corporation (RTC) for conservatorship or receivership of the servicer, or an entity by which the servicer is owned or controlled.

Your new servicer will be _____.
The business address for your new servicer is: _____
_____.
The toll-free [or collect call] telephone number of your new servicer is _____. If you have any questions relating to the transfer of servicing to your new servicer call _____ [enter the name of an individual or department here] at _____ [toll free or collect call telephone number] between _____ a.m. and _____ p.m. on the following days _____.

The date that your present servicer will stop accepting payments from you is _____. The date that your new servicer will start accepting payments from you is _____.

[Use this paragraph if appropriate; otherwise omit] The transfer of servicing rights may affect the terms of or the continued availability of mortgage life or disability insurance or any other type of optional insurance in the following manner _____
_____
_____
_____
_____ and you should take the following action to maintain coverage: _____
_____
_____
_____.

You should also be aware of the following information, which is set out in more detail in Section 6 of RESPA (12 U.S.C. §2605):

During the 60-day period following the effective date of the transfer of the loan servicing, a loan payment received by your old servicer before its due date may not be treated by the new loan servicer as late, and a late fee may not be imposed on you.

Section 6 of RESPA (12 U.S.C. §2605) gives you certain consumer rights. If you send a "qualified written request" to your loan servicer concerning the servicing of your loan, your servicer must provide you with a written acknowledgment within 20 business days of receipt of your request. A "qualified written request" is a written correspondence, other than notice on a payment coupon or other payment medium supplied by the servicer, which includes your name and account number, and your reasons for the request. Not later than 60 business days after receiving your request, your servicer must make any appropriate corrections

to your account, and must provide you with a written clarification regarding any dispute. During this 60-day period, your servicer may not provide information to a consumer reporting agency concerning any overdue payment related to such period or qualified written request.

Section 6 of RESPA also provides for damages and costs for individuals or classes of individuals in circumstances where servicers are shown to have violated the requirements of that Section. You should seek legal advice if you believe your rights have been violated.

BILLING CODE 4210-27-C

Authority: Real Estate Settlement Procedures Act of 1974, as amended (12 U.S.C. 2601 *et seq.*).

Dated: March 14, 1991.

Arthur J. Hill,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 91-6549 Filed 3-19-91; 8:45 am]

BILLING CODE 4210-27-M

federal register

Wednesday
March 20, 1991

Part V

Department of Education

Office of Special Education Programs; Questions and Answers on Final Funding Priorities for Training Personnel for the Education of Individuals With Disabilities Program; Notice

DEPARTMENT OF EDUCATION

[CFDA NO.: 84.029]

Office of Special Education Programs; Questions and Answers on Final Funding Priorities for Training Personnel for the Education of Individuals With Disabilities Program

AGENCY: Department of Education.

ACTION: Notice of questions and answers on final funding priorities for the Training Personnel for the Education of Individuals with Disabilities program.

SUMMARY: A number of questions have been raised about the 1991 priorities under the Training Personnel for the Education of Individuals with Disabilities program that were published in the **Federal Register** on February 6, 1991 (56 FR 4906). Concerns were raised regarding how changes in the organization of personnel preparation priorities might affect preparation and design of applications as well as the review process. Since these topics are not generally covered in the published priorities, we hope that the following responses will clarify these issues for potential applicants.

Questions and Answers

Question: Must an application address a competitive priority in order to receive serious consideration?

Answer: No, applicants are not required to address any of the competitive priorities in order to receive serious consideration. All applications, including those that do not address competitive priorities, will be reviewed under the same program selection criteria and panel review procedures that have been used in prior years. However, since the purpose of competitive priorities is to direct a significant portion of available funds to the areas identified by the Department as most critical, applications effectively addressing any of these priority areas will have a greater probability of support than applications that do not.

Question: Will all applications that address the same absolute and competitive priorities be competing against one another?

Answer: Yes. Applications that address the same absolute and competitive priorities will be competing against one another.

Question: Will it be possible for an application to address four competitive priorities? If so, will that proposal be included in four review panels—one for each competitive priority addressed?

Answer: It is possible for one application to address several different competitive priorities. The notice of final priorities specifies which competitive priorities are applicable under each absolute priority. Regardless of how many competitive priorities are addressed in an application, the application will be reviewed by only one panel. As in prior years, panels are established to reflect multiple areas of expertise.

Question: Who will determine which competitive priorities an application addresses, and how can the applicant be assured that it will be appropriately reviewed?

Answer: As indicated in the application notice and the published priorities, the applicant determines which absolute and competitive priorities it addresses and indicates this determination on the application form. The Government assures that review panels have the skills required for appropriate review by waiting to create review panels until after applications have been received. This makes it possible to select reviewers with the expertise needed for their particular panels. Individual applications are then assigned to the panel most closely matched to the issues addressed.

Question: How would an application that is submitted under the absolute priority on low-incidence populations, and that focuses on speech and hearing needs in a rural area be coded and reviewed? How would expert panelists be selected?

Answer: The application would be first coded and assigned for review under the low-incidence competition (absolute priority #4). It would be noted that it addresses the competitive priority for training personnel to serve in rural areas.

Finally, it would be coded as dealing with speech and hearing problems and whatever specific low-incidence population is addressed. The application would be assigned to a panel with expertise on rural issues, speech and hearing, and the particular low-incidence population addressed.

Question: How will proposals be evaluated?

Answer: Application review procedures will be carried out as in prior years. Applications are initially screened to determine whether the applicant is eligible under the program and under which competition the application is competing. The application is then assigned to an appropriate panel. Peer review panels are selected based on their expertise in areas addressed by each set of applications. Following the peer review, funding slates are determined.

Question: How will the points be assigned for competitive priorities?

Answer: In those competitive priorities under which extra points are available, panel reviewers are responsible for the assignment of points that are available under both the program selection criteria and under the competitive priorities. As noted in the published priorities, the extra points assignable under competitive priorities are in addition to any points the application earns under the criteria in 34 CFR 318.21.

Question: Will an application receive additional points for each competitive priority addressed?

Answer: Two of the competitive priorities allow an applicant to receive additional points if the application effectively addresses those competitive priorities. If the notice of final priorities provides that both of these competitive priorities apply to a competition, and an application addresses them both, points could be earned for each of them. The other competitive priorities provide for preferential treatment for applications that meet the priority applications of comparable merit that do not meet those priorities.

Question: How are competitive priorities implemented in the review process? What are the evaluation criteria for the competitive priorities?

Answer: Under EDGAR, in 34 CFR 75.105(c)(2) (i) and (ii), the competitive priorities announced on February 6 are applied in two ways: (1) Providing for extra points, or (2) giving preference to applications meeting priorities over those of comparable merit that do not.

- Additional points may be awarded to an application to recruit students from a particularly promising, untapped population (competitive priority number 1), or to applications focusing on teachers who are working on emergency certificates (competitive priority number 2). Those points are considered in establishing the rank order of applications, thereby providing an advantage to applications that earn points under those competitive priorities.
- Preference is given to applications of comparable merit that meet the competitive priorities over those that do not. This may result in a few projects being funded out of rank order. However, the "comparable merit" standard will probably limit this to only a few cases. For example, if applications ranked 47 through 50 are recommended for approval and are comparable in scores, and those ranked 49 and 50 addressed a competitive priority but 47 and 48 did not, numbers 49 and 50 could be funded out of rank order. However, applications meeting these priorities

would not be funded unless their scores were comparable. If this type of priority had been used in the 1990 competitions, it is estimated that only two or three projects from a total of 254 would have been funded out of rank order.

Question: Under the competitive priorities, it states that, "the Secretary establishes competitive priorities, i.e., awards additional points to applications that meet the priority in a particularly effective way * * *" How is "particularly effective way" defined? Does this mean that an application may or may not be awarded additional points for addressing a competitive priority? What are the evaluation criteria for earning extra points? Will the competitive points be awarded by the review panels?

Answer: The term "particularly effective way" is contained in EDGAR, 34 CFR 75.105(c)(2)(i). The standard is intentionally broad to afford maximum flexibility in reviewing applications that address many different topics under the Department's programs. The review panels will determine the extent to which points should be awarded to particular applications based on this standard.

Question: Will professionals who review the proposals have expertise in each of the numerous competitive priority areas?

Answer: As in previous years, panels will be established to assure that expertise exists in multiple priority areas. It is not unusual for applications to address multiple priorities. For example, last year over a third of the applications received under the rural competition also addressed minority issues. In this instance we were able to establish panels with expertise in the two areas.

Question: Is there a preference among the competitive priorities?

Answer: Applicants gain a greater advantage under the point-bearing priorities than under the other competitive priorities. Awarding extra points can affect the entire range of applications. The other competitive priorities come into play only as a means of deciding between applications recommended for support that are of comparable merit.

Question: Can similar applications be submitted to more than one competition?

Answer: Yes, similar applications may be submitted to more than one competition.

Question: How do we access the "generic" monies that are not allocated to competitive priorities? Do applications not funded under the priorities revert to the generic pot of monies?

Answer: There are no generic monies or any monies allocated to competitive priorities. Program budgeting is based on distribution of funds among absolute priorities. Applications that fail to meet any of the absolute priorities will not be considered. Applications that meet competitive priorities are given preference within a competition defined by an absolute priority, but are not separately budgeted.

FOR FURTHER INFORMATION CONTACT: Max Mueller, Division of Personnel Preparation, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW., (Switzer Building, room 3512–MS 2651) Washington, DC 20202. Telephone (202) 732–1554 (TDD 202–732–1999).

(Catalog of Federal Domestic Assistance Number 84.029, Preparation of Personnel for the Education of Individuals with Disabilities)

Program Authority: 20 U.S.C. 1431.

Dated: March 14, 1991.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 91–6691 Filed 3–18–91; 8:45 am]

BILLING CODE 4000–01–M

federal register

Wednesday
March 20, 1991

Part VI

The President

Executive Order 12756—Continuance of the President's Drug Advisory Council

Federal Register

Wednesday
March 29, 1972

Part VI

The President

Executive Order 11758—Continuance of the President's Drug Advisory Council

Federal Register
Vol. 56, No. 54
Wednesday, March 20, 1991

Presidential Documents

Title 3—

The President

Executive Order 12756 of March 18, 1991

Continuance of the President's Drug Advisory Council

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App. 2), it is hereby ordered as follows:

Section 1. The President's Drug Advisory Council, established by Executive Order No. 12696, is continued until November 13, 1993.

Sec. 2. The second sentence of Section 1(a) of Executive Order No. 12696 is amended by deleting "30" and inserting "35" in lieu thereof.

George Bush

THE WHITE HOUSE,
March 18, 1991.

[FR Doc. 91-6827
Filed 3-19-91; 10:41 am]
Billing code 3195-01-M

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Federal Register

Vol. 56, No. 54

Wednesday, March 20, 1991

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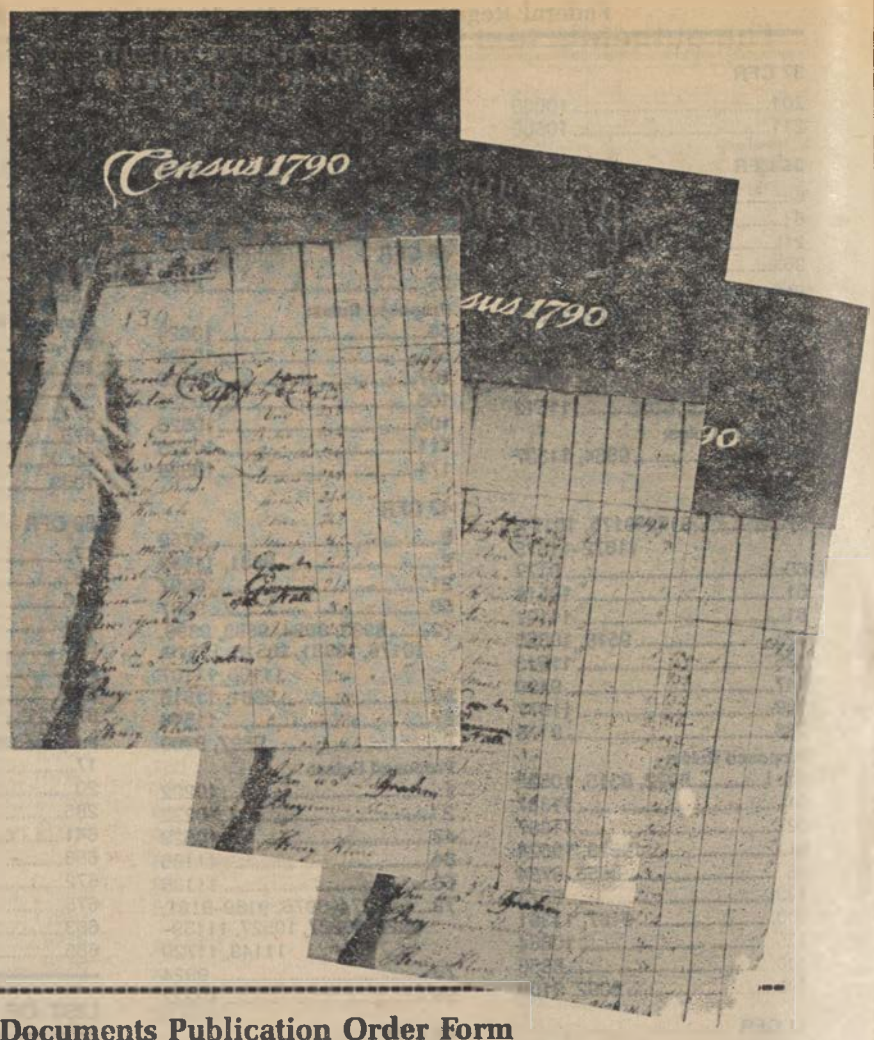

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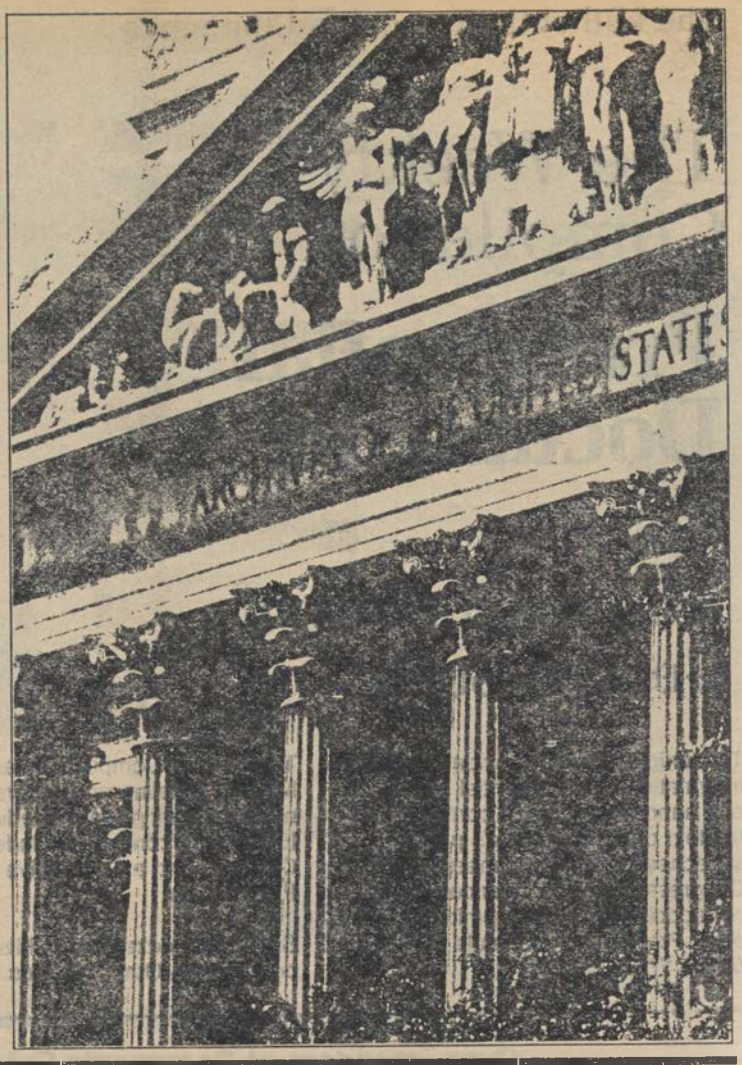

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